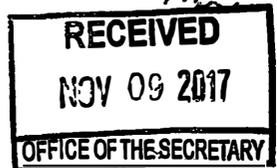


**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**



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In the Matter of the Application of
The Association of Bruce Zipper
With Dakota Securities International, Inc.
For Review of Denial of Registration by
FINRA
File No. 3-18256

**FINRA'S BRIEF IN OPPOSITION TO
REQUESTS FOR STAY**

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November 9, 2017

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I. INTRODUCTION

Bruce Zipper is statutorily disqualified because he willfully failed to disclose on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") three judgments filed against him. Pursuant to Zipper's disqualifying settlement, he agreed to a three-month suspension in all capacities and a \$5,000 fine. Rather than comply with the terms of his suspension, which required him to refrain from associating in any capacity with a FINRA member, Zipper—a securities industry veteran with more than 35 years of experience—continued to regularly advise his customers and recommend securities, in clear violation of the terms of his suspension and FINRA's rules.

In denying the application filed by Dakota Securities International, Inc. (the "Firm") to continue to employ Zipper notwithstanding his statutory disqualification, FINRA's National Adjudicatory Council ("NAC") considered that Zipper violated the terms of his suspension—

serious misconduct subsequent to his disqualifying event that shows “he is currently unable to demonstrate that he can comply with FINRA’s rules and regulations.” The NAC rejected as not credible Zipper’s purported explanations for his misconduct and held that Zipper’s narrow view as to what he could, and could not, do during his suspension was untenable.

The NAC also found, as an independent basis for denying the Firm’s application, that the Firm (owned and run by Zipper) proposed wholly inadequate supervisors. Indeed, the NAC found that Zipper’s primary proposed supervisor had “minimal (if any) direct supervisory experience” and that his proposed alternate supervisor “appears to have no direct supervisory experience.” It also found that the Firm failed to demonstrate that Zipper’s proposed supervisors could objectively and independently supervise him as the owner of the Firm, that “[s]everal key aspects of Zipper’s proposed supervision were in flux up to, during, and after the hearing,” and that Zipper “demonstrated a lack of appreciation for the crucial requirement that statutorily disqualified individuals be subject to stringent supervision by qualified supervisors.”

Finally, the NAC found that the Firm’s proposed heightened supervisory plan was deficient in numerous regards and lacked the detail required of a plan to supervise a statutorily disqualified individual. The Firm’s supervisory plan fell short despite the NAC granting it several opportunities to create a comprehensive supervisory plan. Based upon all of the foregoing, the NAC denied the Firm’s application and found that Zipper’s continued association with the Firm was not in the public interest.

Zipper appealed the NAC’s decision, and now requests (in several letters filed with the Commission) that the Commission stay the decision and permit him to continue to work at, and run, the Firm pending resolution of this appeal. The Commission should deny Zipper’s requests because he has not shown that extraordinary circumstances warrant a stay of the NAC’s denial.

For example, Zipper has not articulated a single reason why he is likely to succeed on the merits of his appeal, and a cursory review of this case unequivocally shows that he has no likelihood of success on the merits of his appeal. The NAC based its denial on Zipper's serious misconduct subsequent to his disqualifying event, as well as glaring deficiencies with Zipper's proposed supervisors and the Firm's proposed heightened supervisory plan. Pursuant to well-established Commission precedent, FINRA properly weighed these factors in denying the Firm's application to continue to employ Zipper.

Further, the Commission has consistently held that any economic or financial detriment that Zipper or the Firm might suffer if his stay request is denied does not constitute the kind of irreparable harm that could justify a stay, and imposing a stay would not result in substantial harm to other parties. Indeed, denying Zipper's stay request would benefit the investing public and serve the public interest—as the NAC found, Zipper's continued association with the Firm presents an unreasonable risk of harm to the market or investors.

For all of these reasons, FINRA urges the Commission to deny Zipper's requests for a stay.

II. FACTUAL BACKGROUND

A. Zipper and the Firm

Zipper has more than 35 years of experience in the securities industry. *See* RP 114, 406. He has been associated with the Firm, which he founded, since August 2004. *See* RP 003, 1148. Zipper generally served as the Firm's chief executive officer and chief compliance officer from the Firm's inception until his disqualifying settlement with FINRA, and he currently is again serving as the Firm's chief executive officer and chief compliance officer. *See* RP 343, 471, 1240. He holds a 70% ownership interest in the Firm. *See* RP 138, 1148.

B. Zipper Is Suspended in All Capacities for his Willful Failure to Disclose Three Judgments

Zipper is statutorily disqualified because he willfully failed to update his Form U4 to reflect three judgments totaling approximately \$22,000. *See* RP 128-33. To resolve these disclosure failures, Zipper voluntarily entered into a Letter of Acceptance, Waiver and Consent with FINRA in April 2016 (the “Disqualifying AWC”).¹ *See id.*

Pursuant to the Disqualifying AWC, Zipper agreed to “[a] three-month suspension from association with any FINRA member in all capacities” and a \$5,000 fine.² RP 130. The Disqualifying AWC expressly stated that Zipper “may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).” RP 130-31. Similarly, the Firm’s written supervisory procedures (“WSPs”) (which Zipper was completely unfamiliar with despite creating and bearing responsibility for them) clearly provided that while under suspension, “employees may not: Have direct or indirect contact with customers” or “[g]ive investment advice or counsel.” RP 1142-43; *see also* RP 1115 (Zipper testifying that he is not “totally up to speed” and does not “know all 500 pages” of the Firm’s WSPs in discussing provisions addressing statutory disqualifications).

¹ After voluntarily agreeing to the Disqualifying AWC, Zipper twice attempted to have it vacated by FINRA staff when he purportedly realized that as a result of becoming statutorily disqualified, he would need to go through a FINRA eligibility proceeding. *See* RP 1295. FINRA staff refused to vacate the Disqualifying AWC, and in April 2017 Zipper sought similar relief from the Commission. The Commission dismissed Zipper’s appeal of the Disqualifying AWC on September 29, 2017. *See Bruce Zipper*, Exchange Act Release No. 81788 (Sept. 29, 2017), <https://www.sec.gov/litigation/opinions/2017/34-81788.pdf>.

² Zipper did not pay the fine; rather, it was discharged in connection with his June 2016 bankruptcy filing. *See* RP 287.

During the term of Zipper's three-month suspension (which ran from May 31, 2016 until August 31, 2016), the Firm promoted Robert Lefkowitz ("Lefkowitz") to serve as the Firm's chief executive officer and Zipper's supervisor. *See* RP 1125, 1156. Zipper elevated Lefkowitz to these roles despite Lefkowitz's complete lack of any supervisory experience. *See* RP 1155-56. In fact, Lefkowitz first registered as a general securities principal just prior to Zipper's three-month suspension so that he could serve in these roles.³ *See* RP 061.

C. Zipper Engages in the Firm's Securities Business During his Suspension

Despite the clear and unambiguous terms of the Disqualifying AWC prohibiting Zipper from associating with any FINRA member in any capacity while suspended, it is undisputed that during the term of his three-month suspension, he regularly communicated with customers concerning their securities accounts (including advising customers and recommending securities to customers). *See generally* RP 719-59. The following email sent by Zipper to two customers during his three-month suspension is illustrative of Zipper's continued association with the Firm:

A stock I like a lot and has been getting high analyst praise is R.R. Donnelley & Sons. . . . I strongly recommend this stock RRD to both of you. You both have large cash balances and this old time blue chip would look good in each of your portfolios. Let me know if interested.

RP 723.

Lefkowitz, Zipper's purported supervisor during his three-month suspension, acquiesced to Zipper's improper activities during the term of his suspension. *See* RP 1013-17, 1156. Lefkowitz could not recall if he ever reviewed the Disqualifying AWC. *See* RP 1164. Moreover, Zipper stated that he conveyed to Lefkowitz his view that he

³ Zipper and Lefkowitz have a close personal relationship. Zipper testified that Lefkowitz was "as close to me as my brother . . . He would do anything for me and me him." RP 623.

was permitted to communicate with customers and that Lefkowitz accepted Zipper's interpretation. *See* RP 1213.

III. PROCEDURAL HISTORY

A. The Firm Files an Application to Continue to Employ Zipper

The Firm filed an application to continue to employ Zipper notwithstanding his statutory disqualification on July 29, 2016 (the "Application"), which sought approval for Zipper's continued employment as a general securities representative (and not in any supervisory capacities). *See* RP 137, 268. The Firm initially proposed that Lefkowitz would serve as Zipper's supervisor pursuant to the following "plan:"

I, Robert Lefkowitz the acting CEO of Dakota Securities will monitor and supervise Bruce Zipper. I have been in the business for more than 20 years and at Dakota for about 8 years. I know the company and know Bruce Zipper well. Dakota is a small company and I believe I will be able to monitor all business at the company including Mr. Zipper's activities. I have a supervisor's license #24 and feel more than capable of making sure Dakota's business is run correctly and with proper supervision. Over time the plan would be to have Mr. Zipper get back to supervising certain activities at the company when that time is right and approved by FINRA.

RP 155.

B. Proceedings Before the NAC

FINRA's Department of Member Regulation recommended that the NAC deny the Application. *See* RP 245. After accommodating Zipper and agreeing to conduct the hearing in this matter in Boca Raton, Florida (near Zipper's residence and business), a subcommittee of FINRA's Statutory Disqualification Committee (the "Hearing Panel") agreed to conduct a hearing on July 12, 2017. *See* RP 195, 231.

Several weeks prior to the hearing, FINRA accepted from Lefkowitz a Letter of Acceptance, Waiver and Consent (the "Lefkowitz AWC"). *See* RP 1013-17. Pursuant to the

Lefkowitz AWC, Lefkowitz consented to findings that he permitted Zipper to violate the terms of his suspension under the Disqualifying AWC. *See* RP 1013-14. As a result, FINRA suspended Lefkowitz in all principal capacities for five months (from July 17, 2017 until December 16, 2017). *See* RP 71-72, 1015.

Zipper and Lefkowitz appeared and testified at the hearing. *See generally* RP 1027-1200. At the hearing, they informed the Hearing Panel that because of Lefkowitz's five-month suspension in all principal capacities pursuant to the Lefkowitz AWC, Diane Alexander would serve as Zipper's primary supervisor (as well as the Firm's chief compliance officer). *See* RP 1067-68, 1207. The Firm further proposed that Drew Alexander would serve as Zipper's alternate supervisor. *See* RP 1068. However, neither Diane Alexander nor Drew Alexander appeared at the hearing. Thus, the Hearing Panel was unable to question Zipper's primary proposed supervisor or his alternate supervisor.

Based upon comments and questions raised by the Hearing Panel at the hearing, the Hearing Panel permitted the Firm to amend its proposed supervisory plan at the hearing. *See* RP 1084-87. The Firm did so, and the Hearing Panel permitted the Firm to submit a second amended heightened supervisory plan after the hearing. *See* RP 1201-03.

C. The NAC Finds that Zipper's Continued Association with the Firm Would Present an Unreasonable Risk of Harm to the Market or Investors

In a decision dated October 2, 2017, the NAC denied the Application, determined that the Firm had failed show that Zipper's continued association with the Firm was in the public interest, and determined that Zipper's continued association with the Firm presented an unreasonable risk of harm to the markets or investors. *See* RP 1293-1312. The NAC based its denial on three grounds.

First, the NAC concluded that Zipper engaged in additional, serious misconduct subsequent to the Disqualifying AWC by violating the terms of his suspension. *See* RP 1304-07. It found that Zipper “regularly communicated with his customers during his suspension and made securities recommendations during that period instead of avoiding associating with the Firm in all capacities as was required by the Disqualifying AWC.” RP 1307. The NAC found it “troubling that a broker with Zipper’s experience in the industry” engaged in “core” broker functions during his suspension. RP 1306. The NAC further found it troubling that Lefkowitz “shared Zipper’s view of what was permissible during his suspension despite the clear language of the Disqualifying AWC.” RP 1306.

The NAC thoroughly rejected Zipper’s arguments that he was permitted to discuss customer accounts with, and recommend securities to, his customers despite the clear language prohibiting such activity in the Disqualifying AWC. *See* RP 1306-07. The NAC rejected Zipper’s “narrow interpretation” of the Disqualifying AWC that he asserted merely precluded him from talking with FINRA or FINRA members and from personally entering trades for customers. *See* RP 1306. The NAC found that Zipper’s view of his suspension was belied by the plain language of the Disqualifying AWC, FINRA Rule 8311 (which was expressly cited in the Disqualifying AWC), and the Firm’s own WSPs. *See* RP 1306.

The NAC also rejected Zipper’s unsupported claim that he was given verbal assurances by FINRA staff that FINRA would not strictly enforce the terms of the Disqualifying AWC and that if an issue arose that Zipper determined only he could handle (because of the Firm’s small size) and his intervention was necessary to prevent harm to the Firm or a customer, Zipper was permitted to handle such matter regardless of the terms of the Disqualifying AWC. *See* RP 1307. The NAC found not credible Zipper’s testimony on this point, and further held that even if

Zipper's testimony was truthful neither he nor the Firm explained why another registered representative could not service Zipper's customers during his three-month suspension.⁴ *See* RP 1307.

Second, the NAC based its denial of the Application on the Firm's failure to show that Zipper's proposed supervisors could stringently supervise him. *See* RP 1308. The NAC held that, despite the Firm bearing the burden to demonstrate that the Application should be approved, it failed to present either Diane Alexander or Drew Alexander at the hearing to testify. *See* RP 1308. It further held that based upon the record, neither of Zipper's proposed supervisors possessed "the necessary supervisory experience to supervise a statutorily disqualified individual such as Zipper under heightened supervision." RP 1309. Indeed, the NAC found that Diane Alexander "appears to have minimal (if any) direct supervisory experience during her career" and that Drew Alexander "appears to have no direct supervisory experience." *Id.* The NAC also found that Lefkowitz, the proposed chief executive officer with supervisory authority over everyone at the Firm (effective once his five-month principal suspension has expired) has minimal supervisory experience and FINRA disciplined him for his failure to ensure that Zipper complied with the terms of his suspension. *See id.* Moreover, the NAC held that the Firm failed

⁴ In the papers Zipper filed with his October 30, 2017 request to stay, Zipper asserts that the FINRA attorney who negotiated the Disqualifying AWC in March or April 2016 assured him that if the Application "was denied that an appeal to the S.E.C. would stay any action until the S.E.C. ruled on my appeal." This assertion is implausible. It is unclear why this FINRA staff member would offer such advice in March or April 2016, or why Zipper would even be asking about a stay of any decision denying the Application (which the Firm filed with FINRA several months after the Disqualifying AWC). This assertion is similar to numerous other baseless claims made by Zipper throughout this proceeding, and further demonstrates Zipper's lack of credibility. *See, e.g.,* RP 1297, 1307; *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 n.6 (2002) ("Credibility determinations by a fact-finder deserve special weight. These determinations can be overcome only when there is 'substantial evidence' for doing so.").

to show that Zipper's proposed supervisors possessed the necessary independence to supervise Zipper, the Firm's owner and individual who hired each of them.⁵ *See* RP 1309-10.

Third, the NAC found that the Firm's revised heightened supervisory plan "remains short on detail and lacks certain basic provisions that we expect to be contained in a supervisory plan for a statutorily disqualified individual." RP 1310. The NAC observed that the Firm's proposed plan was inconsistent in several respects with statements by the Firm, contained no provisions concerning where exactly Zipper would work and whether Diane Alexander and Drew Alexander would provide in person supervision, and that certain provisions of the plan lacked sufficient detail required of a heightened supervisory plan for a statutorily disqualified individual. *See* RP 1311.

For all of these reasons, the NAC ultimately concluded that Zipper's continued association with the Firm was not in the public interest and would present an unreasonable risk of harm to the market or investors. *See* RP 1312. FINRA staff sent Zipper and Lefkowitz a copy of the NAC's denial, and expressly informed them that "[u]nless the Commission stays the effects of the enclosed notice, pursuant to FINRA Rule 9524(b)(3) the enclosed notice is effective immediately." *See* RP 1292.

⁵ The NAC accurately observed that "[s]everal key aspects of Zipper's proposed supervision were in flux up to, during, and after the hearing, including Zipper's proposed supervisors and the terms of his heightened supervision." RP 1299. It also found that "Zipper demonstrated a lack of appreciation for the crucial requirement that statutorily disqualified individuals be subject to stringent supervision by qualified supervisors." RP 1308.

D. Zipper Appeals the NAC's Denial and Files Multiple Stay Requests

On or about October 4, 2017, Zipper and the Firm appealed the NAC's denial.⁶ *See* RP 1315. On or about October 30, 2017, Zipper filed a cursory request that the Commission stay the NAC's denial pending his appeal. Zipper subsequently filed with the Commission a letter dated October 31, 2017, which requested a stay "from a form U-6 filed against me by FINRA on October 28, 2017." Zipper filed a third request dated November 3, 2017, entitled "2nd Request for Stay Due to New Action Taken by FINRA."⁷

Zipper's stay requests state that he "was under the impression that this appeal would stay any FINRA attempt to disqualify me from the industry until the appeal is ruled on" and FINRA deceptively gave him wrong information (i.e., that as long as he appealed the NAC's denial it would be automatically stayed pending appeal). Zipper's purported beliefs that a stay was automatic are meritless. In fact, the cover letter accompanying the NAC decision, which informed Zipper that the denial would be effective immediately unless the Commission stayed it, completely undercuts Zipper's contentions. *See* RP 1292; *see also* FINRA Rule 9527 and Section 19(d)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (providing that an appeal of a denial of a statutory disqualification application such as the Application does not automatically stay its effectiveness). Further, Zipper's stay requests also suggest that Zipper and

⁶ The Commission did not receive Zipper's appeal until October 18, 2017. Further, Zipper's notice of appeal states, in its entirety, that "I, Bruce Zipper, am noticing the Commission that I plan to Petition this Body to review an SRO (FINRA) finding in Case # SD-2129 relating to A MC-400 application that I filed to return to the brokerage industry." *See* RP 1315. Thus, the exact bases for Zipper's appeal are not clear. *See* SEC Rule of Practice 420 (stating that an application for review "shall identify the determination complained of and set forth in summary form a brief statement of the alleged errors in the determination and supporting reasons therefor").

⁷ Zipper did not serve the undersigned with the first stay request, and he served the second and third requests on November 8, 2017.

the Firm will suffer harm if a stay is not granted because FINRA staff have given Zipper one week to “present a plan on how Dakota Securities will show Finra that it has the ability to stay in business without Bruce Zipper being involved in the company in all capacities;” that FINRA will shut down the Firm if it does not present an acceptable plan; and that this one-week timeline is not feasible for a small firm such as the Firm.

IV. ARGUMENT

The Commission should deny Zipper’s request that he be permitted to work at, and run, the Firm pending the Commission’s review of this appeal. The NAC carefully considered that Zipper—with Lefkowitz’s blessing—engaged in serious intervening misconduct by ignoring the terms of his suspension and regularly communicating with his customers about their accounts and recommending securities to them during a time when he was supposed to refrain from associating with the Firm in any capacity. The NAC further considered that the Firm proposed wholly inexperienced individuals to supervise Zipper, a 35-year industry veteran and owner of the Firm who had previously supervised and hired each of his proposed supervisors. Finally, the NAC correctly concluded that the Firm’s proposed heightened supervisory plan fell short and lacked certain provisions expected of a heightened supervisory plan for a disqualified individual.

Based upon these factors, the NAC appropriately concluded that Zipper’s continued participation in the securities industry would present an unreasonable risk of harm to the market or investors. Zipper has not provided any legitimate reasons why the Commission should stay the NAC’s decision pending his appeal, let alone demonstrate that extraordinary circumstances warrant a stay of the NAC’s denial. FINRA urges the Commission to deny Zipper’s request and not permit him to continue to work at, and run, the Firm while this appeal remains pending.

A. The Standard for Considering a Request to Stay

“[T]he imposition of a stay is an extraordinary and drastic remedy,” and the moving party has the burden of establishing that a stay is appropriate. *William Timpinaro*, Exchange Act Release No. 29927, 1991 SEC LEXIS 2544, at *6 & n.12, 13, & 14 (Nov. 12, 1991). In balancing the harms that would result from the grant or denial of a stay, the Commission requires that an applicant establish four criteria: (1) a strong likelihood that he will prevail on the merits; (2) that, without a stay, he will suffer irreparable harm; (3) whether there would be substantial harm to other parties if a stay were granted; and (4) whether the issuance of a stay would serve the public interest. *John Montelbano*, Exchange Act Release No. 45107, 2001 SEC LEXIS 2490, at *12 & n.17 (Nov. 27, 2001) (internal citation omitted). As discussed below, Zipper has not demonstrated that the Commission should grant him the extraordinary relief that he seeks.

B. Zipper Has Not Shown a Strong Likelihood of Success on the Merits

Zipper has not shown a strong likelihood that he will succeed on the merits of his appeal.⁸ Under the Exchange Act, statutorily disqualified persons such as Zipper cannot participate in the securities industry absent a finding by a self-regulatory organization that such participation is in the public interest. *See* 15 U.S.C. § 78o-3(g)(2). Under this framework, FINRA has “broad discretion” to evaluate whether the firm sponsoring the application will uphold high business standards. *M.J. Coen*, 47 S.E.C. 558, 563-64 (1981); *see also Halpert & Co.*, 50 S.E.C. 420, 422 (1990) (“Particularly in matters involving a firm’s employment of persons subject to a statutory

⁸ In fact, as stated above, Zipper has not even asserted that he has a strong likelihood of success on the merits of his appeal (or articulated any bases for his appeal). The Commission should deny Zipper’s request on this basis alone. *See Richard Allen Riemer, Jr.*, Exchange Act Release No. 82014, 2017 SEC LEXIS 3523 (Nov. 3, 2017) (Order Denying Stay) (denying stay request where movant did not assert that his appeal had a strong likelihood of success on the merits and he failed to attempt to rebut FINRA’s findings).

disqualification, it is appropriate to recognize the NASD's evaluation of appropriate business standards for its members.").

Exchange Act Section 19(f) sets forth the applicable standard of review for this appeal. To succeed on appeal, Zipper must show that one of the following criteria have not been met: (1) the "specific grounds" upon which FINRA based its denial "exist in fact;" (2) FINRA's denial is in accordance with its rules; and (3) FINRA's rules are consistent, and were applied in a manner consistent with, the purposes of the Exchange Act. *See* 15 U.S.C. § 78s(f). If all three criteria have been satisfied, then the Commission "shall dismiss the proceeding," unless it finds that such denial "'imposes any burden on competition not necessary or appropriate in furtherance of the purposes' of [the Exchange Act]." *See id.* FINRA complies with the Exchange Act in denying an application such as the Firm's when it bases its determination on a "totality of the circumstances" and explains "the bases for its conclusion." *See Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *46 (Sept. 13, 2010).

The record demonstrates that the specific grounds upon which FINRA denied the Application exist in fact and that FINRA followed its rules and acted consistently with the Exchange Act's purposes in denying the Application. The NAC thoroughly explained the bases for its denial of the Application and properly analyzed the Application pursuant to Commission precedent, including *Paul Van Dusen*, 47 S.E.C. 668 (1981), *Arthur H. Ross*, 50 S.E.C. 1082 (1992), and *May Capital Group, LLC*, Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at *21 (May 12, 2006). These cases direct that where an individual's disqualifying misconduct has already been addressed by the Commission or FINRA, and certain sanctions have been imposed for such misconduct, FINRA should generally consider the following factors

⁹ Zipper makes no such claim here.

in assessing an application to employ a statutorily disqualified individual: (1) misconduct in which the applicant may have engaged since the disqualifying event; (2) “the nature and disciplinary history of a prospective employer;” and (3) “the supervision to be accorded the applicant.” *Van Dusen*, 47 S.E.C. at 671.

The NAC properly applied this precedent in denying the Application in a manner consistent with its rules and the purposes of the Exchange Act. It appropriately considered that Zipper violated the terms of his suspension under the Disqualifying AWC—new information that necessarily arose after Zipper agreed to the Disqualifying AWC—in evaluating the Application. *See Van Dusen*, 47 S.E.C. at 671; *Ross*, 50 S.E.C. at 1085, n.10. The NAC determined that Zipper’s disregard for the terms of his suspension demonstrates that he is currently unable to show that he can comply with securities rules and regulations. Indeed, Zipper’s behavior undermines the entire regulatory scheme involving statutorily disqualified individuals working in the securities industry.

The NAC also properly considered the Firm’s failure to show that it could stringently supervise Zipper—a fatal flaw for the Application. *See Van Dusen*, 47 S.E.C. at 671; *see also Morton Kantrowitz*, 55 S.E.C. 98, 102 (2001) (“In determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of the utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls.”). The NAC held that the Firm proposed inexperienced supervisors and that it failed to show that they could objectively supervise Zipper given his role as the Firm’s owner and prior supervisor for each individual.

The NAC also correctly considered that the Firm's proposed heightened supervisory plan lacked sufficient detail and all elements necessary to ensure that Zipper would be supervised in a stringent and comprehensive manner. *See Nicholas S. Savva and Hunter Scott Financial, LLC*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at *63 (June 26, 2014) (affirming FINRA's denial of application to employ disqualified individual based upon, among other things, an inadequate supervisory plan).

Zipper has not shown, and cannot show, that he has a strong likelihood of success on the merits of his appeal. Each of the factors relied upon by the NAC in support of its conclusion that Zipper's continued association with the Firm presents an unreasonable risk of harm to the market or investors is conclusively established by the record, beyond any serious dispute, and is a well-established factor that the NAC may weigh in determining whether to grant or deny an application for a statutorily disqualified individual to continue to associate with his firm.¹⁰

* * *

The bases for the NAC's denial "exist in fact," and the NAC's denial was consistent with its rules and the purposes of the Exchange Act. Zipper has not provided any argument or evidence that he has a strong likelihood of success on the merits of the underlying denial of the Application, and the Commission should deny his stay request.

¹⁰ Zipper has not alleged that FINRA misapplied its rules by denying the Application or that its denial was inconsistent with the Exchange Act. Regardless, the record amply demonstrates that FINRA followed its rules in conducting the eligibility proceeding to consider the Application. *See infra* Part III.B. The record also shows that denial of the Application is consistent with the Exchange Act because Zipper's continued association with the Firm is not in the public interest and presents an unreasonable risk of harm to the market or investors. *See infra* Part IV.B.

C. Zipper Has Not Demonstrated That a Denial of the Stay Requests Will Impose Irreparable Harm

Zipper's stay requests suggest that he and the Firm will suffer harm if the Commission denies his stay request because in the absence of a stay, FINRA will essentially enforce the terms of the NAC's denial and, in furtherance thereof, has given Zipper and the Firm a deadline to submit a plan to stay in business in Zipper's absence.¹¹ This potential harm, however, does not constitute irreparable harm sufficient to justify granting a stay request. *See Whitehall Wellington Invs., Inc.*, Exchange Act Release No. 43051, 2000 SEC LEXIS 1481, at *5 (July 18, 2000) (holding that the movant must show that the NAC's decision will impose injury that is "irreparable as well as certain and great"); *Timpinaro*, 1991 SEC LEXIS 2544, at *8 (stating that "[t]he key word in this consideration is irreparable").

Indeed, the Commission has repeatedly held that alleged negative economic or financial consequences that may impact a movant if the Commission denies his stay request do not constitute irreparable harm. *See Dawson James Sec., Inc.*, Exchange Act Release No. 76440, 2015 SEC LEXIS 4712, at *10 (Nov. 13, 2015) (Order Denying Stay) ("[M]ere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough to constitute irreparable harm.") (internal citations omitted); *Mitchell T. Toland*, Exchange Act Release No. 71875, 2014 SEC LEXIS 4621, at *9 (Apr. 4, 2014) (Order Denying Stay) (holding that movant did not demonstrate irreparable harm based upon alleged loss of financial opportunities and finding that any such adverse impact "would appear to be attributable to the ultimate resolution of his appeal, not that of his stay motion") (citing cases). Moreover, "[t]he Commission has generally refused to grant stays based on applicants' claims that FINRA's

¹¹ Zipper's stay requests focus more on the feasibility of complying with FINRA staff's alleged request that the Firm submit a plan for operating without Zipper than any financial or economic harm that will result if a stay is denied.

decision will negatively affect, or even close, a business.” *See Meyers Associates, L.P.*, Exchange Act Release No. 77994, 2016 SEC LEXIS 1999, at *15 (June 3, 2016) (Order Denying Stay) (citing cases). Consequently, this factor does not support granting Zipper’s stay requests.

D. Denial of the Stay Requests Will Avoid Potential Harm to Others and Will Serve the Public Interest

Turning to the third and fourth criteria in deciding whether to grant a stay, the balance of equities weighs heavily against staying the effectiveness of the NAC’s decision.¹² The public interest strongly favors protecting investors based on the NAC’s conclusions. Zipper ignored the terms of his suspension in connection with the Disqualifying AWC. Such intervening misconduct was undoubtedly serious. *See Arouh*, 2010 SEC LEXIS 2977, at *59 (affirming denial of firm’s MC-400 where disqualified individual improperly associated with the firm as a principal while subject to a bar order, which constituted “serious intervening misconduct”). Indeed, the NAC concluded that Zipper’s intervening misconduct demonstrates that he is currently unable to comply with securities rules and regulations (which weighs heavily against permitting Zipper to work in the industry while his appeal remains pending).

Zipper’s proclivity to ignore FINRA’s rules are amplified by the NAC’s concerns with Zipper’s proposed supervision, which the NAC described as “in flux” throughout the eligibility proceeding. The NAC found that each of Zipper’s proposed supervisors had little (if any) direct

¹² Zipper fails to address whether any other person will suffer substantial harm in the absence of a stay. In any event, the Commission has previously rejected arguments that third party harm (e.g., harm suffered by customers or firm employees in the absence of a stay) warrant imposing a stay. *See, e.g., The Dratel Group, Inc.*, Exchange Act Release No. 72293, 2014 SEC LEXIS 5094, at *18 (June 2, 2014) (Order Denying Stay) (rejecting the argument that customers’ lost access to a broker’s services constitutes substantial harm or otherwise weighs in favor of granting a stay request); *Meyers Associates*, 2016 SEC LEXIS 1999, at *14-16 (stating that alleged harm to firm’s employees is outweighed by the risks of allowing statutorily disqualified individual to continue in the industry).

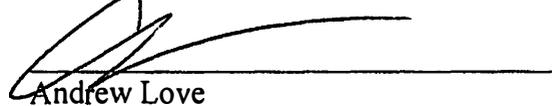
supervisory experience and lacked the necessary independence to stringently supervise a statutorily disqualified individual such as Zipper. The NAC further found that Zipper lacked an appreciation for the requirement that statutorily disqualified individuals must be subject to stringent supervision, and that the proposed supervisory plan (amended several times throughout the proceeding) was deficient. *See M.J. Coen*, 47 S.E.C. at 562-64 (affirming FINRA's denial of a statutory disqualification application where it found that, among other things, the firm's "inadequate sensitivity" for the need for stringent supervision of a disqualified individual); *Savva*, 2014 SEC LEXIS 2270, at *63 (affirming FINRA's denial of application to employ disqualified individual based upon, among other things, an inadequate supervisory plan). Permitting Zipper to continue to engage as an active participant in the securities industry under these circumstances places the markets and public customers at risk.

In balancing any potential injury to Zipper and the Firm against the possibility of harm to the public, the necessity of protecting the public far outweighs any potential injuries to Zipper and the Firm, and the Commission will further the public interest by denying Zipper's stay requests.

V. CONCLUSION

For all of these reasons, the Commission should deny Zipper's requests to stay the NAC's denial of the Application and permit him to work at, and run, the Firm, pending this appeal.

Respectfully submitted,



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