BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

Commonwealth Capital Securities Corp.

For Review of Action Taken by

FINRA

File No. 3-18554

BRIEF OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY IN OPPOSITION TO APPLICATION FOR REVIEW

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I. INTRODUCTION

Commonwealth Capital Securities Corp. (the "Applicant") appeals a May 24, 2018 FINRA National Adjudicatory Council decision that denied a membership continuance application (the "Application") to permit the Applicant's continued FINRA membership despite its association with Kimberly Springsteen-Abbott ("Springsteen-Abbott"), the Applicant's sole indirect owner and a person subject to a statutory disqualification. The NAC found that the Firm failed to make an "extremely strong showing" that allowing Springsteen-Abbott, who FINRA very recently barred from associating with any FINRA member for engaging in egregious, securities-related misconduct, serves the public interest.

The NAC's decision is supported fully by the record, was decided and issued in complete accordance with FINRA rules, and furthers the purposes of the Securities Exchange Act of 1934 ("Exchange Act"). The Applicant does not dispute that Springsteen-Abbott is statutorily disqualified and cannot counter credibly the fact that the misconduct underlying her statutory

disqualification reflected her fundamental lack of integrity. The NAC properly denied the Application after providing the Applicant all of the process that it was due under FINRA rules. Moreover, the NAC's decision appropriately considered the totality of the circumstances presented; including Springsteen-Abbott's continued association with the Applicant while barred, the seriousness and recency of Springsteen Abbott's underlying misconduct, and the Applicant's failure to propose a plan or independent supervisor for Springsteen-Abbott's stringent supervision. Given these factors, which the Applicant does not, and cannot, contest factually on appeal, the NAC decided correctly, consistent with FINRA's statutorily granted discretion to evaluate the business standards of FINRA members and their associated persons, Springsteen-Abbott's continued association with the Applicant is not in the public interest.

Springsteen-Abbott's demonstrated propensity for dishonest behavior plainly outweighs the Applicant's claims that her continued indirect ownership of the Applicant presents an extraordinary circumstance that warrants approving the Application. The Applicant has not made an "extremely strong showing" that permitting Springsteen-Abbott to continue to associate with the firm serves the interests of the investing public. The Commission should therefore affirm the NAC's denial of the Application and dismiss the Applicant's appeal.

II. BACKGROUND

A. Springsteen-Abbott's Control and Ownership of the Applicant

Springsteen-Abbott entered the securities industry in 1980, and she was registered as a general securities representative with two other FINRA members prior to joining the Applicant, which she formed as its chief executive officer in 1997. RP 5-6, 448, 483, 645, 1458, 1566-70. During the period of misconduct that resulted in her statutory disqualification, and until August 24, 2016, Springsteen-Abbott served as the Applicant's chairperson, chief executive officer, and

chief compliance officer. RP 6, 174, 177, 180, 298-99, 433-41, 448, 493, 495-97, 645, 1448-51, 1459-60, 1581-82. During this period, she registered with the Applicant as a general securities representative, direct participation programs representative, and a direct participation programs principal.[1] RP 4.

Springsteen-Abbott is the sole owner of Commonwealth Capital Corporation ("CCC"), an equipment-leasing company, and she has served as the chairperson and chief executive officer of CCC since 2006. RP 81, 177, 178, 265, 298-99, 437, 493, 495, 1438-39, 1459-62, 1593-94. CCC is the sole owner of Commonwealth of Delaware, Inc. ("CDI"), an intermediate holding company that, in turn, solely owns the Applicant and Commonwealth Income & Growth Fund, Inc. ("CIGF"), the general partner or managing member of several public and private equipment-leasing funds (the "Commonwealth Funds") sponsored by CCC. RP 81, 165, 177, 178, 180, 265-67, 292-93, 493, 495, 789, 1438-39, 1459-60, 1593-94. Springsteen-Abbott is thus the sole indirect owner of the Applicant.[2] RP 80-81, 165, 178, 180, 265-66, 495.

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[1] The Applicant terminated Springsteen-Abbott's registrations on September 7, 2016. RP 4, 174.

[2] The Applicant claims, Br. at 4, that subsequent to the NAC's decision to deny the Application, Springsteen-Abbott transferred her indirect ownership in the Applicant to a trust, and thus that she and the Applicant "are in full compliance with the NAC's underlying bar order." The Commission should ignore such extra-record claims and assertions. *See* Commission Rule of Practice 460; 17 C.F.R. § 201.460 ("The Commission shall determine each matter on the basis of the record."). They are unverified and have no bearing on FINRA's decision to deny the Application or the issues raised in the Applicant's appeal. *See Citadel Sec. Corp.*, 57 S.E.C. 502, 511 (2004) ("Under Exchange Act Section 19(f), we consider only the record presented to [FINRA]."); *cf. Patrick H. Dowd*, Exchange Act Release No. 83710, 2018 SEC LEXIS 1875, at *11 (July 25, 2018) (["T]he [exhaustion] requirement facilitates an orderly review of FINRA actions by 'promot[ing] the development of a record' by FINRA 'in a forum particularly suited to create it . . . .'").

The Applicant became a FINRA member in March 1997. RP 78, 169. It has one office, located in Clearwater, Florida. RP 78, 165, 169, 178, 179. The Applicant's office is within a larger suite of offices shared by all of the Commonwealth entities, including CCC. RP 178, 1453-54, 1507-09, 1513, 1618-19, 1623-24. The Firm serves as the introducing broker-dealer for the Commonwealth Funds, offering the funds on a wholesale basis through participating broker-dealers. RP 177, 179, 266, 1432, 1438-39. It does not have any customers or hold any customer accounts. RP 179, 789, 1431.

CCC is a small company. RP 1490, 1570-71, 1600-01, 1620-22. The employees of CCC conduct the work of the Applicant and CIGF, such that all employees of the Applicant and CIGF, several of whom are members of Springsteen-Abbott's family, are also employees of CCC. RP 295-303, 409, 1462-67, 1518-21, 1542-43, 1595, 1614-17. The Applicant has an expense sharing agreement under which CCC pays many expenses of the Applicant, including all employee salaries, rent, and other office expenses. RP 171, 177, 409-11, 803-04, 1434-35, 1451, 1462-63, 1486-90, 1617-18. The Applicant is also dependent on capital infusions from CCC to operate. RP 266, 803-04, 1451, 1486-90, 1561-62, 1627-30, 1639-40. Springsteen-Abbott, as sole owner of CCC, authorizes all expenses paid for and capital contributions made to the Applicant; the Applicant is thus dependent on Springsteen-Abbott to fund its operations. RP 171, 177, 266, 409-11, 803-04, 1434-35, 1451, 1462-63, 1486-90, 1617-18, 1627-30, 1639-40.

B. The Membership Continuance Proceeding

1. FINRA Bars Springsteen-Abbott

On August 23, 2016, the NAC issued a final FINRA disciplinary decision that found Springsteen-Abbott misused investment fund monies by improperly allocating to the funds personal and other non-fund expenses, in violation of FINRA Rule 2010. RP 91-108. The NAC

barred Springsteen-Abbott from associating with any FINRA member in any capacity, fined her $100,000, and ordered that she disgorge $208,953.75, plus prejudgment interest. RP 108. The NAC's decision made clear that the bar imposed on Springsteen-Abbott was immediately effective, and FINRA advised her that the bar would not be stayed pending appeal to the Commission unless the Commission ordered a stay. RP 108, 111.

2. The Application

On August 30, 2016, FINRA's Department of Registration and Disclosure ("RAD") informed the Applicant that Springsteen-Abbott was statutorily disqualified because of the August 23, 2016 NAC decision that barred her from associating with any FINRA member in any capacity. RP 121-22. RAD also informed the Applicant that Springsteen-Abbott's ownership of the Applicant made her a person associated with a member, thus she could not continue to associate with the Applicant, and the Applicant could not continue in FINRA membership, without FINRA's written approval. RP 121.

On September 28, 2016, the Applicant filed the Application to initiate a membership continuance proceeding and asking that FINRA permit Springsteen-Abbott's continued association with the Applicant despite her status as a statutorily disqualified person.[3] RP 165-92. The Applicant requested that FINRA permit Springsteen-Abbott to continue her association with the firm as its sole indirect owner. RP 165-66, 178, 180, 265. The Applicant proposed this

[3] The Applicant represented that it is not currently conducting business with any third parties and does not intend to engage in any offerings of the Commonwealth Funds during the "proximate future." RP 180. It further represented that it is staffed with only those "essential employees" necessary to maintain the Firm's books and records, investor services, and other legal and compliance activities. RP 180. The Firm, however, is capital compliant, and nothing prevents it from resuming activities on behalf of CCC and the Commonwealth Funds at a time of its choosing. RP 1555-56.

"limited" association so that Springsteen-Abbott, in her role as the sole owner of CCC, could continue to fund the Applicant's operations, which it asserted is a benefit to the investors of the Commonwealth Funds. RP 165-66, 178, 180, 265-66.

In support of the Application, the Firm submitted a "Non-Participation Agreement," which was drafted at Springsteen-Abbott's direction and unilaterally executed by her on August 23, 2016. RP 174, 178, 184, 495-96, 1580-81, 1610-11. The Non-Participation Agreement states that, while she is barred from associating with any FINRA member, Springsteen-Abbott "will not be actively engaged in the management of [the Firm's] securities business, including day-to-day supervision, solicitation, or conduct of the business, or the training or oversight of persons associated with [the Firm]." RP 496. It further states that Springsteen-Abbott commits to "not use [her] ownership of [CCC] to direct the day-to-day business or operations of [the Firm]," asserts that "[she] will no longer act as the controlling person of the business and operations of [the Firm]," and claims that she will not hold herself out as a principal or representative of the Firm in its securities business. RP 496.

The Application further represented that CCC effected several corporate changes to remove Springsteen-Abbott from "control" of the Applicant. RP 167, 174, 178, 180, 433-41. On August 24, 2016, Springsteen-Abbott called a special meeting of the CCC board of directors to advise the board's members of the NAC's August 23, 2016 decision barring her immediately from associating with any FINRA member in any capacity. RP 433. The minutes of the board's meeting reflect that Springsteen-Abbott recommended that the CCC board take action to "establish a strong barrier" between her, as a control person of CCC, and the Applicant. RP 433. The meeting minutes reflect also that the CCC board, in accordance with Springsteen-Abbott's recommendations, adopted a number of resolutions. RP 433-41. First, the CCC board

established a "separate" board of directors for the Applicant, which would assume "total responsibility" for the Applicant's operations.[4] RP 434. Second, the CCC board elected Henry Abbott ("Abbott"), James Pruett ("Pruett"), and Lynn Whatley as members of the Applicant's board, and it designated Abbott as its chairperson. RP 434. Finally, the CCC board appointed Abbott to serve as the Applicant's chief executive officer and Pruett to serve as the Applicant's chief compliance officer. RP 434.

The Application proposed that Abbott, Springsteen-Abbott's husband of 10 years, serve as her primary supervisor in the event FINRA approved the Application. RP 168, 170, 184-86, 645. Abbott joined CCC in 1998, and he became president of the company in 2006. RP 645, 1457-58. Abbott has been a member of CCC's board of directors since at least 2006 and, with Springsteen-Abbott, currently serves as one of two members of the company's executive committee.[5] RP 298-99, 435, 1470-71.

Abbott also began working for the Applicant in 1998, and he became a vice-president of the Applicant and a member of its board of directors in 2006. RP 35, 645, 952, 1458-59. As noted above, he was appointed chairperson of the Applicant's board of directors and its chief

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[4] Prior to, and including, August 24, 2016, the boards of the Commonwealth entities held their meetings on a consolidated basis. RP 433-41, 1645-46. The Application describes the Applicant's new board as "self-perpetuating." RP 178.

[5] On August 24, 2016, when it effected changes that purported to separate Springsteen-Abbott from the Applicant, the CCC board appointed Springsteen-Abbott and Abbott to serve as the sole members of the CCC board's executive committee with authority to exercise the board's powers in the management of CCC's business. RP 435, 1467-68, 1470-71.

executive officer on August 24, 2016.[6] RP 434. Abbott further holds the title of president.[7] RP 437. He has not previously supervised a person subject to a statutory disqualification or implemented a plan of heightened supervision. RP 1453.

The Application further proposed that Pruett serve as Springsteen-Abbott's alternate supervisor. RP 251. Pruett joined CCC in 2002, and he is a senior vice-president of the company, overseeing compliance functions. RP 437, 1636-37, 1645. He has served as secretary, and a non-voting member, of CCC's board since at least 2008. RP 299, 1645.

Pruett has been associated with the Applicant since 2002, and he is registered with the firm as a direct participation programs representative and a direct participation programs principal. RP 44, 1636-37, 1645. As noted above, Pruett has served as a member of the Applicant's board of directors, and as its chief compliance officer, since August 24, 2016. RP 434, 437, 1636-37. Pruett too has not previously supervised a person subject to a statutory disqualification or implemented a plan of heightened supervision. RP 1650.

The Applicant submitted a proposed, 12-point heightened supervisory plan with the Application. RP 178-79. The plan consists mainly of boilerplate language and generic provisions. RP 178-79. Among other things, it provides that Springsteen-Abbott will not maintain discretionary accounts, will not open any investor accounts, and not write any order tickets or initiate any offers or sales of securities, activities that the Applicant does not permit in any event. RP 179. The plan does not contain any provision that references the gravity of

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[6] Abbott is the sole member of the executive committee of the Applicant's board of directors. RP 1476.

[7] Abbott is also the president of CIGF, and he has been a member of the CIGF board of directors since at least 2006. RP 298-99, 437.

Springsteen-Abbott's disqualification or the misconduct underlying her disqualification, and does not address her unqualified bar from the securities industry. RP 179. The Applicant has not otherwise adopted any formal plan or written supervisory procedures to monitor Springsteen-Abbott's compliance with the terms of the Non-Participation Agreement, or implement steps necessary for Abbott to ensure and document her compliance.[8] RP 1504-05, 1638. When FINRA barred Springsteen-Abbott, the Applicant simply scrubbed Springsteen-Abbott's name from the firm's written supervisory procedures; it did not amend those procedures in any way. RP 1638.

3. The Commission Remands the NAC's Decision

Prior to filing the Application, Springsteen-Abbott appealed the NAC's August 23, 2016 decision to the Commission. RP 113-15. On March 31, 2017, the Commission remanded that disciplinary decision to FINRA for further proceedings. *See Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 SEC LEXIS 1068 (Mar. 31, 2017). The Commission found that the NAC, in affirming the disciplinary hearing panel's findings of a violation, misstated the hearing panel's findings. *Id.* at *15. The Commission explained that the NAC's findings of a violation against Springsteen-Abbott included that she improperly allocated 1,840 charges, whereas the disciplinary hearing panel based its finding of a violation on a subset of specific expenses discussed in the hearing panel's decision and which the hearing panel found demonstrated a pattern and practice over three years. *Id.* The Commission concluded that a

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[8] Pruett, the Applicant's chief compliance officer, testified that the proposed plan of heightened supervision did not require detailing every step the Applicant would take to supervise Springsteen-Abbott because some things would simply be "understood." RP 1651. He further testified that the Applicant would develop in the future the "meat" of the procedures it intends to implement to supervise Springsteen-Abbott's continued association with the firm as a statutorily disqualified person. RP 1651.

remand was "necessary so that the NAC can clarify the basis on which it is upholding liability and explain how its findings of violation inform the sanctions imposed." *Id.* at 16.

Following the Commission's remand, a subcommittee (the "Hearing Panel") of FINRA's Statutory Disqualification Committee adjourned the Applicant's membership continuance proceeding. RP 103-14, 1019-20. The Hearing Panel requested that the Firm and FINRA's Department of Member Regulation ("Member Regulation") file briefs that addressed the effect, if any, of the Commission's remand of the NAC's August 23, 2016 disciplinary decision on Springsteen-Abbott's status as a statutorily disqualified person and, thus, the Application.[9] RP 1013-14, 1019-20. Prior to reaching a decision on that issue, however, the NAC issued a July 20, 2017 remand decision in Springsteen-Abbott's disciplinary matter, which again barred Springsteen-Abbott and rendered the issue addressed by the parties' briefs moot. RP 129-63.

4. The NAC Issues a Remand Decision That Again Bars Springsteen-Abbott

The NAC's July 20, 2017 remand decision found that Springsteen-Abbott, over a three-year period, misused the monies of several investment funds by improperly allocating to the Commonwealth Funds personal and other non-fund related expenses, in violation of FINRA Rule 2010. RP 132-56. The remand decision, which constitutes the final action of FINRA in the relevant disciplinary proceeding, limited its findings of a violation to the specific expenses discussed in the disciplinary hearing panel's decision, which the NAC also found established Springsteen-Abbott's pattern and practice of improperly allocating expenses over a three-year

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[9] The Commission's remand order made no statement concerning the force of the sanctions imposed by the NAC's August 23, 2016 decision while the matter was on remand to FINRA.

period. RP 132. The decision reaffirmed the unqualified bar that the NAC earlier imposed for Springsteen-Abbott's misconduct, but it reduced the fine imposed on her to $50,000 and the sum of disgorgement ordered to $36,225.85, plus prejudgment interest. RP 162.

5. The Hearing Panel Conducts a Hearing

Springsteen-Abbott appealed the NAC's remand decision to the Commission, but she did not request that the Commission stay the bar FINRA imposed on her. RP 1064. Because the bar imposed by the NAC's July 20, 2017 remand decision was effective immediately, the Hearing Panel advised the parties, on November 14, 2017, that the Applicant's membership continuance proceeding would progress to a hearing, but the Hearing Panel first allowed the Applicant and Member Regulation to supplement, respectively, the Application and FINRA staff's recommendation as to whether the NAC should approve the Application. RP 1059, 1061-1266, 1267-71.

On February 21, 2018, the Hearing Panel conducted a hearing to consider the Application. RP 1389-1713. Springsteen-Abbott testified, as did Springsteen-Abbott's proposed primary supervisor, Abbott, her proposed alternate supervisor, Pruett, and the Applicant's FinOp, Ted Cavaliere.[10] RP 1389-1713. The Applicant and Member Regulation presented closing arguments to the Hearing Panel by telephone conference on March 2, 2018. RP 1717-85.

6. The NAC Denies the Application

The NAC's May 24, 2018 decision denied the Application and found that permitting Springsteen-Abbott's continued association with the Applicant presented an unreasonable risk of

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[10] The Applicant and Springsteen-Abbott were represented by counsel at the hearing.

harm to the market and investors.[11] RP 1805-20. The NAC found that the Applicant fell "far short" of meeting its obligation of making an "extremely strong showing" that Springsteen-Abbott's continued association with the firm was in the public interest. RP 1813-14.

As an initial matter, the NAC concluded that the NAC's July 27, 2017 disciplinary decision to bar Springsteen-Abbott from associating with any FINRA member in any capacity rendered her statutorily disqualified under FINRA's By-Laws and Section 3(a)(39) of the Exchange Act, a fact that the Applicant does not dispute. RP 165-66, 1061-69, 1805-06. The NAC then gave three, independent reasons in support of its decision to deny the Application. RP 1814-20. First, the NAC found troubling the Applicant's decision to allow Springsteen-Abbott to continue to associate with the firm while barred, a serious violation of FINRA's rules. RP 1814-16. Second, the NAC concluded that Springsteen-Abbott's statutorily disqualifying misconduct was serious and undermined the integrity of the securities industry, and virtually no time had elapsed since its occurrence to warrant the conclusion that Springsteen-Abbott should be permitted to associate with Applicant despite the fact that FINRA had barred her. RP 1814, 1816-18. Finally, the NAC found that the Applicant's proposed plan of supervision was inadequate and wrought with several obvious conflicts of interest that undercut the ability of the Applicant to supervise stringently Springsteen-Abbott. RP 1814, 1818-20.

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[11] FINRA filed the NAC's decision, which under FINRA Rule 9524(b) represents the final action of FINRA in the Applicant's membership continuance proceeding, with the Commission pursuant to Exchange Act Rule 19d-1(e). RP 1801.

On June 22, 2018, the Applicant appealed the NAC's decision to deny the Application to the Commission.[12] RP 1823-24.

III. ARGUMENT

Section 19(f) of the Exchange Act establishes the standard for the Commission's review of FINRA's denial of the Applicant's membership continuance application. *See Robert J. Escobio*, Exchange Act Release No. 83501, 2018 SEC LEXIS 1512, at *13 (June 22, 2018). Section 19(f) directs the Commission to dismiss the Applicant's appeal if the Commission finds: 1) the specific grounds on which FINRA based its denial exist in fact; 2) FINRA acted in accordance with its rules; and 3) FINRA applied its rules in a manner that is consistent with the purposes of the Exchange Act.[13] *See id.*

The NAC's decision to deny the Application comports fully with the standards of Exchange Act Section 19(f).

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[12] The Applicant asks that the Commission grant it the opportunity to present oral argument. The Commission should deny this request. Commission Rule of Practice 451 provides that the "Commission will consider appeals . . . on the basis of the papers filed by the parties without oral argument unless the Commission determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument." *See* 17 C.F.R. § 201.451. The Applicant has not shown that the Commission's review of this matter, which raises issues that the Commission considers routinely when reviewing FINRA membership continuance applicants, would be significantly aided by oral argument.

[13] Section 19(f) also requires the Commission to set aside FINRA's action if it finds that the action imposes an undue burden on competition. *See* 15 U.S.C. 78s(f). The Applicant does not claim, nor does the record support finding, that FINRA's action imposes such a burden.

A. The Specific Grounds for the NAC's Denial Exist in Fact

1. Springsteen-Abbott is Statutorily Disqualified

The NAC found, and the Applicant does not dispute, that Springsteen-Abbott is subject to a statutory disqualification.

Under FINRA's By-Laws, a person is subject to a "disqualification" with respect to FINRA membership, or association with a FINRA member, if such person is subject to any "statutory disqualification" as that term is defined in Section 3(a)(39) of the Exchange Act. *See* FINRA By-Laws, Art. III, § 4. Exchange Act Section 3(a)(39)(A) defines "statutory disqualification" to include a bar or suspension from associating with a member of any self-regulatory association. *See* 15 U.S.C. § 78c(a)(39)(A).

On July 20, 2017, FINRA, a self-regulatory organization, issued a final disciplinary decision that found Springsteen-Abbott, over a three-year period, misused the monies of several investment funds by improperly allocating to the funds personal and other non-fund related expenses, in violation of FINRA Rule 2010. For this egregious misconduct, the NAC imposed an array of sanctions on Springsteen-Abbott, including an unqualified bar from associating with any FINRA member in any capacity, a sanction that makes her statutorily disqualified.[14]

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[14] Springsteen-Abbott's continued association with the Applicant caused the Applicant itself to become statutorily disqualified and ineligible for FINRA membership. *See* FINRA By-Laws, Art. III, §§ 3, 4; *see also* 15 U.S.C. § 78c(a)(39)(E) ("A person is subject to a 'statutory disqualification' with respect to membership . . . , if such person [h]as associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A) . . . of this paragraph.").

2. The Factors that Support the NAC's Denial Exist in Fact

The NAC considered three, independent factors when it concluded that granting the Application was not in the public interest. Each of these considerations, which the Commission has commonly recognized as grounds to support the denial of a membership continuance application, exist in fact.[15]

a. Springsteen-Abbott Associated with the Applicant While Barred

The FINRA By-Laws provide that a statutorily disqualified individual may not associate with a FINRA member. *See* FINRA By-Laws, Art. III, § 3(b). The FINRA By-Laws further prohibit a FINRA member to continue in membership if any person associated with the member is ineligible to be an associated person of the member. *See id.* Thus, no FINRA member that is ineligible for FINRA membership may continue as a FINRA member unless the member requests and receives FINRA's written approval. *See* FINRA By-Laws, Art. III, § 3(d); *see also Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *26 (Sept. 12, 2010) ("As a statutorily disqualified person, Arouh became ineligible to associate with a FINRA member firm without FINRA's consent.").

The Applicant does not dispute that FINRA's decision to bar Springsteen-Abbott subjected her to a statutory disqualification. The Applicant also does not dispute that

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[15] The Applicant suggests that the NAC's findings concerning the first consideration, namely Springsteen-Abbott's impermissible continued association with the Applicant while barred, "tainted" or "poisoned" the remainder of the NAC's decision to deny the Application. Br. at 3, 18. They do not. A fair and careful reading of the NAC's decision establishes that the NAC considered several factors, each without reference to the others, in rendering its decision. In any event, the Applicant bears the burden of establishing, given the serious and recent nature of Springsteen-Abbott's misconduct, and the Applicant's failure to produce an adequate plan and independent supervisor for her stringent supervision, that granting the Application is in the public interest. This is a burden the Applicant has not met.

Springsteen-Abbott continued to associate with the Applicant, and the Applicant continued to permit her association, while the Application was pending, despite her disqualification and without FINRA's approval. Springsteen-Abbott's continued association with the Applicant while disqualified as a result of FINRA's bar is, as the NAC found correctly, a serious violation of FINRA rules that alone justifies the NAC's decision to deny the Application. *See Arouh*, 2010 SEC LEXIS 2977, at *49 & n.63 ("[W]e consider violation of a bar order very serious misconduct. We agree with FINRA that the seriousness of Arouh's misconduct militates against allowing the Application.").

Before the Commission, the Applicant seeks to excuse this misconduct by referencing general information that FINRA provides on its website concerning FINRA's eligibility process.[16] Br. at 12-13. The Applicant's arguments are nevertheless plainly misplaced.[17]

The referenced information states, "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*." RP 1792 (bold in original) (italics added for emphasis). The information further reads, "[i]f a person is currently associated with a FINRA member at the time the disqualifying

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[16] This information is reproduced fully in the record. RP 1791-97. The information the Applicant references provides a general overview of FINRA's eligibility requirements and the process for filing an MC-400 application. The information is not a FINRA rule and does not inform the meaning of any FINRA rule.

[17] At the hearing, the Applicant claimed that it relied on the advice of counsel in permitting Springsteen-Abbott to continue to associate with the firm while barred. The Applicant, however, failed to establish its reasonable reliance on competent legal advice. *See Arouh*, 2010 SEC LEXIS 2977, at *52 ("[W]e have held that to successfully assert reliance on the advice of counsel, a respondent must establish 'that the respondent made full disclosure to counsel, appropriately sought to obtain relevant legal advice, obtained it, and then reasonably relied on the advice.'")

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." RP 1792 (bold in original). The foregoing statement, however, is expressly limited by the next statement of the paragraph: "a member subject to a disqualification also **may be** allowed to remain a member, provided the member promptly files an application requesting approval of its continued membership, *and the disqualifying event does not involve a licensing sanction, such as a bar, revocation or expulsion.*" RP 1792 (bold in original) (italics added for emphasis).

As FINRA's use of the phrase "may be" indicates, the foregoing information speaks only to the possibility that FINRA might permit a FINRA member, under limited circumstances, to continue in membership despite its association with a statutorily disqualified person.[18] *See Writing Explained, Maybe vs. May Be: What's the Difference*, https://writingexplained.org/maybe-vs-may-be-difference (last visited Sept. 25, 2018). It does not permit an ineligible FINRA member firm, like the Applicant, to decide unilaterally, and without FINRA's assent, to

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[18] Examples of those circumstances under which FINRA has permitted a statutorily disqualified individual to associate with a FINRA member while FINRA considered a membership continuance application include cases where individuals have already served a time-limited sanction or are statutorily disqualified by terms that do not otherwise restrict the individual's ability to associate with a member. *See, e.g.*, *In the Matter of the Continued Ass'n of Robert J. Escobio with S. Trust Sec., Inc.*, SD-2130, slip op. at 5 n.3 (FINRA NAC July 27, 2017), http://www.finra.org/sites/default/files/NAC_SD-2130_Escobio_072717_0.pdf, *aff'd*, 2018 SEC LEXIS 1512 (permitting statutorily disqualified person to work at the applicant pending resolution of the application where the person was disqualified as a result of a permanent injunction from engaging in activities governed by the Commodity Exchange Act); *In the Matter of the Ass'n of Scott Mathis with DPEC Capital, Inc.*, SD-1960, slip op. at 3 n.5 (FINRA NAC Apr. 30, 2015), http://www.finra.org/sites/default/files/SD-1960_Mathis.pdf (permitting continued association pending resolution of the application where the disqualified individual paid all fines and served a three-month suspension).

continue to associate with a person that FINRA has barred without qualification while the member pursues approval of a membership continuance application.[19] *See Ass'n of X*, Redacted Decision No. SD11003, slip op. at 5 n.3 (FINRA NAC 2011), http://www.finra.org/sites/default/files/NACDecision/p126106_0_0.pdf ("We find that X should not have associated with the Sponsoring Firm in any capacity . . . upon entry of the AWC and pending resolution of the Application.").

The Application did not effect, as the Applicant's arguments necessarily imply, a stay of those FINRA rules that caused Springsteen-Abbott's immediate bar from the securities industry or the Applicant's duty to abide by that bar. *See id.* Under FINRA Rule 9360, the bar FINRA imposed on Springsteen-Abbott, in each of the final decisions issued in the disciplinary proceeding that resulted in her statutory disqualification, became effective immediately.[20] *See* FINRA Rule 9360 ("A bar . . . shall become effective upon service of the decision."). FINRA Rule 8311(a) therefore unmistakably prohibited the Applicant to allow Springsteen-Abbott's association with the firm in any capacity, including a clerical or ministerial capacity, which was

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[19] The discretion to permit a statutorily disqualified person's continued association with a FINRA member rests squarely with FINRA. *See* 15 U.S.C. § 78o-3(g)(2); FINRA By-Laws, Art. III, § 3(d); *see also Arouh*, 2010 SEC LEXIS 2977, at *48-49 ("We have . . . afforded FINRA discretion in determining whether persons subject to statutory disqualification should be permitted to associate with a member firm."). The Applicant cites to no provision of the Exchange Act, no FINRA rule, nor any NAC decision concerning FINRA's eligibility process that plausibly and fairly supports its claim that a FINRA member, under limited circumstances, may usurp this discretion.

[20] If Springsteen-Abbott wished to stay the effect of a FINRA imposed bar, she was obligated to seek such a stay from the Commission during her appeal of FINRA's disciplinary action. *See* Commission Rule of Practice 401, 17 C.F.R. § 201.401; *see also* FINRA Rule 9370(a) ("The filing with the SEC of an application for review by the SEC shall stay the effectiveness of any sanction, other than a bar . . . ."). FINRA's disciplinary action twice presented Springsteen-Abbott that opportunity, and she twice declined to pursue it.

inconsistent with the bar imposed on her by FINRA.[21] Any assertion to the contrary is inconsistent with the clear language and meaning of the relevant FINRA rules and disregards, with impermissible effect, the purpose of those rules that govern the association of statutorily disqualified individuals with FINRA members. *Cf. BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 99 (2006) ("We are mindful of the fact that a statute should be read where possible as effecting a 'symmetrical and coherent regulatory scheme.'"). The Applicant's assertion that its filing of the Application in effect stayed the NAC's bar of Springsteen-Abbott would render these provisions superfluous. *See optionsXpress, Inc.*, Exchange Act Release No. 78621, 2016 SEC LEXIS 2900, at *89 & n.93 (Aug. 18, 2016) (rejecting an interpretation of an Exchange Act rule where the interpretation would leave the rule "ineffectual in accomplishing its purposes").

The Applicant's further claim, that FINRA's examinations of the Applicant confirm that Springsteen-Abbott's continued association with the Applicant while barred was not a violation of FINRA rules, Br. at 13-15, is easily dismissed.[22] As the Commission has long held, a FINRA member and its associated persons cannot shift their burden of complying with FINRA rules to

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[21] FINRA Rule 8311 states, in relevant part, "[i]f a person is subject to a . . . bar from association with a member . . . , 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."

[22] There is no evidence that the Applicant consulted with FINRA staff concerning the FINRA website information upon which it now relies to excuse its decision to allow Springsteen-Abbott's continued association with the firm while barred. *See Franklin N. Wolf*, 52 S.E.C. 517, 523 n.28 (1995) ("If, as Applicants argue, they were truly uncertain of how to treat the franchise rights, they could have sought assistance from the NASD or our own staff."). Even if it had, erroneous advice from FINRA staff does not serve as a basis for granting the Application. *See JJFN Servs., Inc.*, 53 S.E.C. 335, 342 (1997) ("[O]ur authority to order the NASD to include the issuer's securities is governed by Exchange Act Section 19(f), not by a theory of promissory estoppel or quasi-contract.").

FINRA. *See Arouh*, 2010 SEC LEXIS 2977, at *57. The Applicant thus may not claim FINRA's implicit approval to avoid the serious consequences of its, and Springsteen-Abbott's, deliberate actions to continue in association with one another despite her bar from the securities industry.[23] *See id.* at *58.

b. Springsteen-Abbott's Misconduct Is Serious and Recent

The record supports fully the NAC's conclusion that the seriousness of the misconduct underlying Springsteen-Abbott's statutory disqualification, and the decidedly recent nature of the FINRA's action barring her permanently from the securities industry, merited FINRA's denial of the Application. The Applicant presents no meaningful facts or arguments that undermine this just conclusion.

FINRA's final disciplinary decision barring Springsteen-Abbott is unequivocal and based on findings that she engaged in serious, securities-related misconduct. RP 129-63. The NAC found that Springsteen-Abbott violated FINRA Rule 2010 by misusing the monies of the Commonwealth Funds to pay for personal and non-fund related business expenses. RP 132. These included, expenses incurred during a 2009 birthday cruise to Alaska; meals with Abbott, family, friends, and grandchildren that did not have business justifications; expenses incurred by Abbott during trips for hair restoration services, and to attend his daughter's baby shower; anniversary dinners; a Mother's Day meal; and expenses incurred during a family vacation. RP 132-147. They included also control person expenses that not permitted by the governing documents of the Commonwealth Funds. RP 147-48. The NAC therefore concluded that

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[23] As FINRA's examination letters make clear, an "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." *See, e.g.*, RP 1799.

Springsteen-Abbott, over a three-year period, engaged in a pattern of misuse of funds that was unethical and reflected her inability to comply with the regulatory requirements of the securities business and to fulfill her fiduciary duties in handling other people's money. RP 149-50. Springsteen-Abbott's offense was serious, undermined the integrity of the securities industry, and demonstrated her fundamental unfitness to conduct business as an associated person of a FINRA member. RP 157-58.

Given the egregious character of her underlying misconduct, the NAC rightly concluded that the Applicant failed to make the "extremely strong showing" that it is in the public interest for FINRA to permit Springsteen-Abbott's continued association with her firm despite her bar. RP 1817. The NAC found also that far too little time has passed since FINRA imposed a bar and for the Applicant to demonstrate credibly that she is currently able to comply with the federal securities laws and refrain from engaging in other misconduct. RP 1817. The NAC's decision to deny the Application, under these facts, is fully consistent with Commission precedent.[24] *See, e.g., Escobio*, 2018 SEC LEXIS 1512, at *16-17 ("The NAC concluded reasonably that the seriousness of Escobio's misconducted supported denying the membership continuance

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[24] As it did before the NAC, the Applicant seeks to revisit FINRA's decision to bar Springsteen-Abbott by attempting to recast her egregious misconduct as being the result of mere, innocent "errors" and "mistakes." Br. at 2, 6-11. The Applicant, however, is estopped from re-litigating here the factual findings or legal conclusions that support FINRA's disciplinary decision to bar Springsteen-Abbott from the securities industry. *See Escobio*, 2018 SEC LEXIS 1512, at *30 ("The NAC 'correctly adhered to [FINRA's] long-standing policy of prohibiting collateral attacks on underlying disqualifying events.'"). As the NAC found when it barred her, Springsteen-Abbott engaged in a purposeful pattern and practice of improperly allocating expenses. RP 132. In assessing sanctions, the NAC found a number of aggravating factors, and no mitigating factors, that supported Springsteen-Abbott's permanent bar from the securities industry, including that her actions were intentional and likely would have continued absent detection, and she attempted to conceal her misconduct with false justifications and documentation. RP 25-29.

application. . . . The NAC concluded reasonably that this determination was too recent for Escobio to have demonstrated that he could comply with the securities laws in the future.").

c. The Applicant Failed to Present an Adequate Plan for Springsteen-Abbott's Stringent Supervision

The NAC's decision to deny the Application is replete with the support of record evidence that the Applicant failed to propose a plan of heightened supervision that would afford Springsteen-Abbott the stringent supervision that is the Applicant's burden to provide. This evidence includes the Applicant's failure to propose independent supervisors, its offering of a generic plan of supervision, and its reliance on an agreement, the Non-Participation Agreement, that the NAC concluded, correctly, offered little or no meaningful controls to separate Springsteen-Abbott from the Applicant. RP 1818-20.

First, the NAC found, and the Applicant does not contest, that Abbott lacks the independence necessary to supervise Springsteen-Abbott stringently. RP 1818. Their spousal and close business relationship is fraught with any number of potential conflicts of interest that create the potential that Abbott will not apply stringent supervision to Springsteen-Abbott. *See, e.g.*, *Escobio*, 2018 SEC LEXIS 1512, at *22 ("We have found that such factors undermine the independence of a supervisor . . . .").

Second, the NAC found, and ample evidence shows, that it would in this case be extremely difficult for any employee of the Applicant to supervise Springsteen-Abbott. Springsteen-Abbott wields considerable power as the sole owner of CCC. RP 1818-19. Among other things, because all employees of the Applicant, including Abbott and other family members, are also employees of CCC, she retains the power to fire them. RP 1472, 1545. She is also responsible for paying the salaries of the Applicant's employees through her ownership of

CCC. Finally, the evidence is uncontested that the Applicant remains dependent on Springsteen-Abbott to finance the firm's operations as a broker-dealer. These facts, and others, support fully the NAC's decision to deny the Application. *See, e.g.*, *Asensio & Co.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at *28 (Dec. 20, 2012) ("[I]t is especially 'difficult for employees to supervise effectively the activities of the owner of a firm.'").

Finally, the NAC found that the Applicant's proposed supervisory plan was inadequate, failed to reflect the gravity of Springsteen-Abbott's misconduct or the nature of her unqualified bar, and contained largely generic, boilerplate language that was either inapplicable to the Applicant's business or was not unique to Springsteen-Abbott's proposed activities. RP 1819-20. Abbott, Springsteen-Abbott's proposed supervisor, testified that the Applicant would implement the details necessary to ensure the firm's stringent supervision of Springsteen-Abbott only if FINRA approved the application. RP 1504-05. Pruett, Springsteen-Abbott's proposed alternate supervisor, even questioned the need to propose and adopt a robust supervisory plan, claiming that many elements of the firm's proposed supervisory plan would simply be "understood." RP 1651. As the Commission has concluded, however, a plan that the firm might, or might not, develop in detail at a future date is inadequate. *See, e.g.*, *Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *28 (Mar. 26, 2010) (stating that a firm bears the burden of proposing an adequate supervisory plan and FINRA was fully justified in requiring the firm to provide specifics concerning that plan before approving an application). In this respect, the NAC addressed specifically in its decision the Applicant's proposed supervision plan and concluded, correctly, that it lacked a key component, stringent supervision. *See, e.g.*, *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS

5100, at *63 (June 26, 2014) ("FINRA considered Hunter Scott's proposed supervisory plan and properly found that its design and implementation were flawed.").

At the end of the day, the Application rested nearly exclusively on the Non-Participation Agreement that the Applicant's witnesses discussed at length during the statutory disqualification hearing. Before the Commission, the Applicant contends that, through the Non-Participation Agreement, "Springsteen-Abbott agreed to give up all control over [the Applicant] and agreed not to participate in any way in its governance." Br. at 23. As the NAC nevertheless found, the Non-Participation Agreement is aspirational only, and it does not meaningfully sever Springsteen-Abbott's control over the Applicant. RP 1819-20. As Springsteen-Abbott conceded in her hearing testimony, she retains the authority, as the Applicant's sole indirect owner and under the firm's corporate by-laws, to amend those by-laws, determine the composition of the firm's board and appoint its directors, call meetings of the firm's board, and inspect the firm's books and records. RP 1597-98, 1660, 1602, 1604. Indeed, she admits, nothing prevents her from undoing later the restrictions that the Non-Participation Agreement purports to impose on her.[25] RP 1609. Tellingly, the Applicant did not propose any formal procedures to establish that Springsteen-Abbott is abiding by the terms of the Non-Participation Agreement and that Abbott is taking steps to ensure her compliance. *See Arouh*, 2010 SEC LEXIS 2977, at *39 ("[T]he plan

[25] The Applicant claims that, "[i]f the NAC had approved [the Application], the Non-Participation Agreement would be a binding commitment to FINRA by [the Applicant] and Ms. Springsteen-Abbott, no different than any other agreements member firms make with FINRA when filing membership application and the like." Br. at 23. The Non-Participation Agreement, however, was executed solely by Springsteen-Abbott. RP 495-97, 1610-11. And in fact, the terms of the "agreement" are such that Springsteen-Abbott expressly retained the right to withdraw from it if FINRA approved the Application. RP 496.

lacks detail: it does not explain how Specht would conduct his reviews, or what records he would keep of them.").

Springsteen-Abbott has been at the epicenter of the Commonwealth entities for more than two decades, and she continues to hold various positions of control, including over the Applicant. As Springsteen-Abbott and the Applicant's other witnesses testified, CCC is a small company where the employees of the various entities under its umbrella are dependent on one another to conduct business. Springsteen-Abbott continues to interact with the officers, directors, and employees of the Applicant on a daily basis. As the NAC found, and the hearing testimony made clear, success in this environment depends to some extent on informal lines of communication that are necessarily inconsistent with the idea of formal, stringent supervision. The Applicant proposed no meaningful measures to cope with this vulnerability in the Application. To be frank, there is no evidence to support credibly the Applicant's contention that Springsteen-Abbott has given up any meaningful control over the Applicant.[26]

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[26] The Applicant contends that the Hearing Panel, and thus the NAC, erred in concluding that the hearing testimony of neither Springsteen-Abbott nor Abbott was credible. Br. at 23-24. The Hearing Panel's credibility determinations, which are based on the Hearing Panel hearing the witnesses' testimony and observing their demeanor, are entitled to consider considerable deference. *See Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *24-25 (Oct. 20, 2011). The Applicant offers no evidence, let alone the required substantiale evidence, that is necessary to overturn the Hearing Panel's credibility findings. *See id.* at *25e ("Such determinations 'can be overcome only where the record contains substantial evidence fore doing so.'"). The NAC properly discharged its duty to independently evaluate the Applicatione and explain the bases for its decision. *See Frank Kufrovich*, 55 S.E.C. 616, 625 (2002) (rejectinge an argument that FINRA ignored testimony that a statutorily disqualified person would not posee a threat to the investing public). FINRA staff were not, as the Applicant suggests, Br. at 24,e required to provide evidence contradicting either the testimony of Springsteen-Abbott or Abbott,e although they did. *See id.* at 627 n.17 (rejecting a claim that NASD staff were required toe introduce evidence contradicting a psychiatrist's and probation officer's shared view that thee disqualified individual poses no or a minimal risk to investors).e

B. The NAC Fairly Adjudicated This Matter in Accordance with FINRA Rules

Article III, Section 3(d) of the FINRA By-Laws provides that any member ineligible for continued membership may file an application requesting relief from the ineligibility pursuant to FINRA rules. FINRA Rules 9520 through 9525 set forth the rules for FINRA eligibility proceedings. The NAC adjudicated and issued its decision to deny the Application in full accordance with these rules.

As required under FINRA Rule 9522, FINRA notified the Applicant of Springsteen-Abbott's statutory disqualification and the Applicant's ineligibility for continued membership. RP 121-22. Thereafter, the Applicant filed the Application initiating the membership continuance process, and FINRA considered the Application consistent with the process afforded under FINRA 9524.

The NAC appointed a Hearing Panel, which issued notice that it would conduct a hearing. *See* FINRA Rule 9524(a)(1)-(2). Prior to conducting the hearing, the Applicant and Member Regulation transmitted to the Hearing Panel all required documents, including Member Regulation's recommendation and the parties' proposed exhibit and witness lists. *See* FINRA Rule 9524(a)(3).

The Hearing Panel conducted a hearing, and in doing so, afforded the Applicant and Springsteen-Abbott the opportunity to be heard in person and represented by an attorney, and to submit any relevant evidence. *See* FINRA Rule 9524(a)(4). The hearing was recorded, and a transcript was prepared by a court reporter. *See* FINRA Rule 9524(a)(6).

Finally, the Hearing Panel made a written recommendation to the NAC's Statutory Disqualification Committee, which in turn presented its written recommendation to the NAC. *See* FINRA Rule 9524(b). On May 24, 2018, the NAC issued a written decision denying the

Application, the contents of which conformed entirely to FINRA rules, including a discussion of the origin of the Applicant's eligibility proceeding and Springsteen-Abbott's disqualification, a full description of her proposed continued association with the Applicant, and the grounds for the NAC's denial of the Application. *See id.*

Before the Commission, the Applicant does not dispute that FINRA followed the process for a membership continuance application in this case in accordance with FINRA rules. The Applicant nevertheless argues that FINRA denied it a "fair hearing" because the Hearing Panel declined the Applicant's request to recuse the Hearing Panel's attorney-adviser.[27] Br. at 24-25. This argument is unfounded.

The sole basis for the Applicant's claim of bias is the fact that the attorney-adviser's name appeared on a legal brief FINRA filed in Springsteen-Abbott's appeal of the NAC's July 20, 2017 remand decision to the Commission. RP 1375-77. In the Applicant's view, the attorney-adviser, who also appears as FINRA counsel on this brief, "formed a personal view that Ms. Springsteen-Abbott should have been sanctioned and that the sanctions were appropriate." Br. at 25.

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[27] On January 31, 2018, the Applicant moved to recuse the Hearing Panel's "advisory hearing officer." RP 1375-77. The Hearing Panel denied the Applicant's motion after consulting with an independent attorney-adviser from FINRA's Office of General Counsel. RP 1381. The Hearing Panel concluded that the Applicant had not demonstrated that the fairness of the Hearing Panel's attorney-adviser "can reasonably be questioned" in connection with this statutory disqualification matter. RP 1381. The NAC affirmed the Hearing Panel's decision to deny the Applicant's motion when it issued its decision to deny the Application. RP 1807. The NAC's review in this matter serves to eliminate any alleged bias of which the applicant complains. *See Frank J. Custable*, 51 S.E.C. 643, 651 (1993) ("[T]he fact that both the National Committee and this Commission have undertaken an extensive de novo review of the record in this proceeding and found no bias serves to counter any abuse of which Custable complains.").

As well-settled precedent makes abundantly clear, however, the merits of the NAC's findings in Springsteen-Abbott's disciplinary case, and the propriety of the bar the NAC imposed on her, which resulted in her statutory-disqualification, are not at issue in this matter. *See Robert J. Sayegh*, 52 S.E.C. 1110, 1112 (1996) ("The merits of that proceeding, however, are not before us."). The NAC's decision denying the Application instead addresses the question of whether the proposed continued association of Springsteen-Abbott, given her bar from the securities industry and ensuing statutory disqualification, is consistent with the public interest and the goal of ensuring investor protection. *See Savva*, 2014 SEC LEXIS 5100, at *5. No view taken or expressed by FINRA in Springsteen-Abbott's appeal of FINRA's disciplinary decision bears upon the Applicant's membership continuance proceeding and thus cannot serve as a basis for a claim of bias in this matter.[28] *Cf. Custable*, 51 S.E.C. at 651 ("[S]ince Custable's allegations relate to possible prejudice only in the second proceeding, they are irrelevant to the issues here."). The NAC's decision denying the Application provides no evidence in support of the Applicant's assertion that any element of bias informed its conclusions.[29] *See Asensio*, 2012

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[28] Taken to its logical conclusion, the Applicant's claim of bias would mean that the NAC could never consider and render a decision on a membership continuance application necessitated by a statutory disqualification stemming from a disciplinary sanction the NAC itself imposed. In fact, the NAC has done so repeatedly, which is in accordance with FINRA rules for membership continuance applications.

[29] The Applicant contends, Br. at 25, that the NAC's findings that Springsteen-Abbott associated impermissibly with the Applicant while barred is evidence of bias. It is, unequivocally, not. *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *62 (Jan. 30, 2009) ("Adverse rulings, by themselves, generally do not establish improper bias."), *aff'd*, 416 F. App'x 142 (3d Cir. 2010). To prove bias, the Applicant is required to provide evidence that the NAC's decision stems from an extrajudicial source not gleaned from the record. *See id.* It is has not met this burden. *See Rafael Pinchas*, 54 S.E.C. 331, 347 (1999) ("Pinchas makes general allegations of conspiracy and bias by the NASD staff, the hearing panel, and the attorney-advisor. We find such allegations to be unsubstantiated by the record.").

SEC LEXIS 3954, at *54 (rejecting claims that the NAC was biased in its decision on the merits of a membership application because it was "guided and influenced" by FINRA Office of General Counsel staff that also advised the FINRA board on rulemaking affecting the FINRA membership process). In this matter, the NAC determined simply that it would not grant the Applicant relief from a disqualification that Springsteen-Abbott previously incurred. *See Kufrovich*, 55 S.E.C. at 630.

C. The NAC Applied FINRA's Rules Consistently with the Purposes of the Exchange Act

In cases such as this one, involving an unqualified FINRA bar order, the Applicant was required to make an "extremely strong showing" that Springsteen-Abbott's continued association with the Applicant is in the public interest. *See Asensio*, 2012 SEC LEXIS 3594, at *17 n.22 ("We also agree with FINRA's previous statement that 'a FINRA-barred applicant is required to make an extremely strong showing' to justify a finding 'that approval of an application for re-entry would serve the public interest.'). It failed to carry its burden, and the NAC, correctly, denied the Application.

Under the express terms of the Exchange Act, FINRA may deny a FINRA member's application to associate with a statutorily disqualified person if FINRA determines that the person's employment under the member's proposed plan of heightened supervision is not consistent with the public interest and the protection of investors. *See* 15 U.S.C. § 78o-3(g)(2). As the Commission has held, the NAC's denial of a membership continuance application is consistent with the Exchange Act where the denial explains how the particular disqualifying event, examined in light of the circumstances relating to that disqualification, creates an unreasonable risk of harm to the market or investors. *See Timothy P. Emerson*, Exchange Act

Release No. 60328, 2009 SEC LEXIS 2417, at *14 (July 17, 2009). The NAC's decision denying the Application, in full accordance with FINRA rules, provided such an explanation by appropriately weighing all facts and circumstances surrounding Springsteen-Abbott's disqualification, and the Applicant's proposed supervisory plan. *See id.*

As the NAC's decision makes clear, the misconduct underlying Springsteen-Abbott's statutory disqualification, which occurred recently, is especially egregious. Springsteen-Abbott undermined the integrity of the securities industry, and her conduct demonstrates her fundamental unfitness to conduct business in the securities industry.

The NAC's decision also explicitly addressed the numerous shortcomings of the Applicant's proposed plan of supervision. The NAC concluded that the Applicant failed in its burden to demonstrate that it is capable of providing the stringent supervision required for Springsteen-Abbott as a statutorily disqualified person.

Finally, the NAC's decision weighed, appropriately, the judgment of the Applicant to allow Springsteen-Abbott's continued association with the firm while she was disqualified, and prior to obtaining approval of the Application. This conduct, the NAC found, leads to the conclusion that Springsteen-Abbott's continued association with the Applicant is not in the public interest; instead, it indicates a palpable aversion to abide by a disciplinary decision, demonstrating both an unreasonable failure to abide by regulatory requirements and the propensity for ongoing regulatory violations.

The Applicant's claim that the NAC's decision denying the Application was "clearly erroneous and unsupported by the record," Br. at 19, is entirely unfounded. As the record and the NAC's decision prove, unequivocally, the NAC discharged its duties under the Exchange Act to evaluate independently the Application and, based on a totality of the circumstances, to

explain the bases for its conclusion. *See Kufrovich*, 55 S.E.C. at 625-26 ("We conclude that the NASD applied its rules in a manner consistent with the purposes of the Exchange Act.").

The Applicant, at several points in its opening brief, asserts that Springsteen-Abbott's underlying misconduct did not involve the Applicant, and thus declining to permit her continued association with the Applicant serves no purpose. Br. at 2, 6, 20, 21, 22. Implied in this assertion is the Applicant's argument that Springsteen-Abbott should not bear the consequences of a FINRA imposed bar for conduct unrelated to a broker-dealer. This argument lands far wide of its intended mark.

"A propensity for dishonest behavior is of particular concern in the securities industry, an industry that presents numerous opportunities for abuses of trust." *See Kufrovich*, 55 S.E.C. at 627. The Commission has thus recognized that, in order to protect investors, FINRA may demand a high level of integrity from its members and their associated persons. *Id.* Congress, through the Exchange Act, grants FINRA discretion in matters involving a member's association with a person who is statutorily disqualified. *See Arouh*, 2010 SEC LEXIS 2977, at *48-49. Particularly in such matters, "it is appropriate to recognize [FINRA's] evaluation of appropriate business standards for its members." *Halpert and Co.*, 50 S.E.C. 420, 422 (1980).

FINRA's July 20, 2017 remand decision found that Springsteen-Abbott misused investment fund monies to pay for personal and non-fund expenses, in violation of FINRA Rule 2010. FINRA Rule 2010 states, "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." The rule is "designed to enable [FINRA] to regulate the ethical standards of its members" and "encompass[es] business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security." *See Stephen Grivas*, Exchange Act Release No. 77470,

2016 SEC LEXIS 1173, at *10 (Mar. 29, 2016) (quoting *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996)). That Springsteen-Abbott's statutorily disqualifying misconduct did not involve the misuse or theft of funds of the Applicant's customers is of no moment. Her misconduct, which was in this case securities-related, reflects her fundamental unfitness to associate with a FINRA member. *See id.* at *17 ("Even if the misconduct does not involve a security, the misconduct can indicate the associated person's unfitness and FINRA can properly conclude that 'on another occasion' the misconduct could very well involve securities."). Indeed, the Exchange Act makes no distinction between those events that render a person statutorily disqualified based upon whether those events are "securities related." *See Emerson*, 2009 SEC LEXIS 2417, at *22. The fact that Springsteen-Abbott's underlying misconduct did not result, directly, from her role as a registered person of the Applicant does not weigh, as the Applicant suggests, in favor of granting the Application. *See id.* at *22.

The Applicant's often-repeated claims that Springsteen-Abbott regularly infused money into the Commonwealth Funds, Br. at 2, 5, 19-21, and that her role as the indirect owner of the Applicant benefits investors in the Commonwealth Funds, Br. at 2, 4, 19-21, prove no more persuasive. The Applicant's intimations of Springsteen-Abbott's benevolent openhandedness do nothing to make the egregious nature of the misconduct underlying her statutory disqualification any less palpable.[30] *See Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS

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[30] The Applicant's suggestion that Springsteen-Abbott has infused approximately $2.4 million into the Commonwealth Funds for no reason other than some purported generosity is incredible given her other disciplinary history.

On September 27, 2013, the Commission entered an order instituting a cease-and desist proceeding against Springsteen-Abbott and CIGF for misleading disclosures in the offering documents of the Commonwealth Funds that Springsteen-Abbott, CIGF's owner, chairman, and

[Footnote continued on next page]

3629, at *30 (Sept. 3, 2015) ("[W]e give Olson no credit for her purported generosity."). FINRA's eligibility proceedings "are necessary to ensure that persons who have in effect been barred from conducting business in securities do not continue to work as a securities professional unless, under all circumstances, they do not pose a threat to the public interest or the protection of investors." *See Meyers Assoc., L.P.*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096, at *33 (Sept. 29, 2017). Any claimed harm to Commonwealth Fund investors is outweighed surely by FINRA's concerns about Springsteen-Abbott's ability to comply with the securities laws and the threat she poses to the public. *See id.* at 29-30 ("We agree with FINRA that applicants' regulatory and disciplinary histories, the recency and seriousness of the Connecticut order, and the inability of the firm's proposed supervisors to stringently supervise

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[cont'd]
chief executive office, approved. RP 183-89. The Commission concluded that, from 2006 through 2011, CIGF made misleading disclosures concerning the expenses it charged to the Commonwealth Funds. RP 184. The Commission found that Springsteen-Abbott and CIGF negligently failed to disclose, in violation of Section 17(a) of the Securities Act of 1933, that Springsteen-Abbott was the sole person who fit within the definition of a "controlling person," and CIGF and CCC routinely expensed a portion of the salaries of all their other employees, executive officers, and directors to the Commonwealth Funds. RP 184-87. The Commission also found that Springsteen-Abbott and CIGF thus caused several of the Commonwealth Funds to violate Section 15(d) of the Exchange Act, and Exchange Act Rules 12b-20, 15d-1, and 15d-13, which require every issuer who has filed a registration statement which becomes effective under the Securities Act to file with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain such material information as may be necessary to make the required statements not misleading. RP 184-87.

For their misconduct, the Commission imposed on Springsteen-Abbott and CIGF, jointly and severally, a $150,000 civil monetary penalty, and it ordered that they pay prejudgment interest totaling $77,566. RP 187-89. The Commission ordered that Springsteen-Abbott and CIGF pay, jointly and severally, disgorgement of $1,548,688, less a credit of $1,408,598 for reimbursements, contributions, and fee waivers Springsteen-Abbott made to the Commonwealth Funds. RP 187-89.

Meyers as a statutorily disqualified individual and owner of the Firm provided a basis for its conclusion that the membership continuance application should be denied."); *Savva*, 2014 SEC LEXIS 5100, at *62 ("Savva has no 'absolute right' to engage in employment in the securities industry. His customers 'remain free to find another [broker]. The Commission has an obligation to protect the investing public.'"); *cf. Dawson James Sec., Inc.*, Exchange Act Release No. 76440, 2015 SEC LEXIS 4712, at *13 (Nov. 13, 2015) (Order Denying Stay) ("Any claimed harm to Shapiro's customers is outweighed by FINRA's concerns about Shapiro's ability to comply with the securities laws and the threat he poses to investors.").

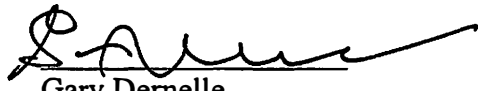
Finally, the Applicant's claim that the purported "limited" nature of its business provides an "extraordinary circumstance" that warrants approval of the Application, Br. at 1-3, 19-20, is meritless. The Applicant is not special. It is engaged in the business of offering the securities of the Commonwealth Funds for sale to members of the public. RP 789. For these activities, the Applicant earns commission revenues of up to ten percent on the sales of those securities. RP 790.eSuch compensation is one of the "hallmarks" of being a broker-dealer. *See SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011). The fact that the Applicant does not itself have any customer accounts or hold any customer funds does not warrant granting the Application. *See, e.g.*, *Asensio*, 2012 SEC LEXIS 3954, at *9 (upholding FINRA's denial of application for membership despite the applicant's intention to engage only in the business of selling mutual funds on a subscription or application basis); *Citadel*, 57 S.E.C. at 504-05 (affirming FINRA's denial of a membership continuance application where the applicant had no customers, ceased making markets in securities, and limited its activities to selling proprietary securities positions); *see also Arouh*, 2010 SEC LEXIS 2977, at *20 (denial of membership continuance application

even though the statutorily disqualified individual would not trade for proprietary or retail accounts).

IV. CONCLUSION

The Applicant does not dispute that Springsteen-Abbott is statutorily disqualified because of a very recent, FINRA bar order that found that she engaged in serious, securities-related misconduct that reflects poorly on her integrity and fundamental fitness to remain in the securities industry. The Applicant's decision to allow her to continue associate with the Applicant while barred also reflects poorly on the ability of the Applicant and Springsteen-Abbott to comply with the federal securities laws and FINRA rules now and in the future. The Applicant failed to propose a plan of heightened supervision that is free from obvious conflicts of interest and provides for Springsteen-Abbott's stringent supervision. Based on these factors the NAC concluded that Springsteen-Abbott's continued association with the Applicant is not in the public interest. The NAC arrived at this decision in a manner that was fully consistent with FINRA's rules, and it furthers the purposes of the Exchange Act. The Commission should therefore affirm the NAC's decision to deny the Application and dismiss the Applicant's appeal.

Respectfully submitted,



Gary Dernelle
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Date: September 27, 2018

CERTIFICATE OF SERVICE

I, Gary Dernelle, certify that on this 27th day of September 2018, I caused the original and three copies of the Brief of FINRA in Opposition to Application for Review in the matter of Application for Review of Commonwealth Capital Securities Corp., Administrative Proceeding No. 3-18554, to be served by messenger on:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090

and by overnight FedEx on:

Steven Felsenstein, Esq.
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2700 Two Commerce Square
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Different methods of service were used because courier service could not be provided to Mr. Felsenstein.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Gary Dernelle, certify that the Brief of FINRA in Opposition to Application for Review, filed with the Commission on September 27, 2018, in the matter of Application for Review of Commonwealth Capital Securities Corp., Administrative Proceeding No. 3-18554, complies with the length limitations set forth in Rule 450(c) of the Commission's Rules of Practice. I have relied on the word count feature of Microsoft Word in verifying that this brief contains **10,700** words.

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September 27, 2018

VIA MESSENGER

Brent J. Fields
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RE: In the Matter of the Application for Review of Commonwealth Capital Securities Corp.; Administrative Proceeding No. 3-18554

Dear Mr. Fields:

Enclosed please find the original and three copies of the Brief of FINRA in Opposition to Application for Review in the above-captioned matter.

Please contact me at (202) 728-8255 if you have any questions.

Very truly yours,

Gary Dernelle

cc: Steven Felsenstein, Esq.
Brennan Love