

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of  
Christopher Cota  
as an  
Investment Company Products and  
Variable Contracts Limited Representative  
with  
Capital Financial Services, Inc.

Notice Pursuant to  
Section 19(d)  
Securities Exchange Act  
of 1934

SD-2027

May 20, 2016

**I. Introduction**

On January 30, 2014, Capital Financial Services, Inc. (“the Firm”) filed a Membership Continuance Application (“MC-400” or “the Application”) with FINRA’s Department of Registration and Disclosure. The Application requests that FINRA permit Christopher Cota (“Cota”), a person subject to a statutory disqualification, to associate with the Firm as an investment company products and variable contracts limited representative. On May 20, 2015, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter. Cota appeared at the hearing, accompanied by his counsel, James Yong, Esq., his proposed primary supervisor at the time of the hearing, Kenneth W. Burkett (“Burkett”), and the Firm’s chief compliance officer, president, and the Firm’s financial and operations principal (“FINOP”), John R. Carlson (“Carlson”).<sup>1</sup> Deon McNeil-Lambkin, Esq., Ann-Marie Mason, Esq., and Lorraine Lee-Stepney appeared on behalf of FINRA’s Department of Member Regulation (“Member Regulation”).

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<sup>1</sup> In April 2016, the Firm notified FINRA that it had “recently decided” that Carlson would serve as Cota’s primary supervisor.

For the reasons explained below, we deny the Firm's Application.<sup>2</sup>

## II. The Statutorily Disqualifying Event

Cota is statutorily disqualified because on September 26, 2012, he pled no contest to two felony charges (Corporal Injury on Present or Former Spouse or Cohabitant or Parent of Child and Preventing or Dissuading Witness or Victim from Testifying or Doing Other Acts).<sup>3</sup> On November 7, 2012, a California court sentenced Cota to 90 days in jail, three years of probation, and fined him \$740 (plus probation fees).<sup>4</sup> The court also ordered Cota to submit to alcohol testing, enroll as an out-patient in an alcohol and batterer's treatment program, refrain from possessing or using alcohol or being present in any establishment where the primary items for sale are alcoholic beverages, continue attending Alcoholics Anonymous meetings, and complete 40 hours of community service.

Before the Hearing Panel, Cota testified about the events underlying his felony convictions and his relationship with VL, his girlfriend and fiancée. In April 2012, Cota, VL, and some friends and family gathered at a restaurant to celebrate Cota's fortieth birthday. Cota testified that he and VL became intoxicated, got into an argument, and Cota left the restaurant without VL. Cota further testified that he asked his parents to make sure VL got home safely

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<sup>2</sup> Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. In turn, the Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council (the "NAC"). Under FINRA Rule 9524(b)(3), the NAC provided its proposed written decision to the FINRA Board of Governors ("FINRA Board"), which exercised its discretionary review powers under FINRA Rule 9525. This matter is now before the NAC on remand from the FINRA Board.

<sup>3</sup> FINRA's By-Laws provide that a person is subject to "disqualification," and thus must seek and obtain FINRA's approval prior to associating with a member firm, if he is disqualified under Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"). *See* FINRA By-Laws, Article III. Exchange Act Section 3(a)(39)(F) provides that a person is subject to a statutory disqualification if he has been convicted of any felony within 10 years of the date of the filing of an application to associate with a member firm.

Cota is also statutorily disqualified due to a Summary Revocation of his insurance license, based upon his felony conviction, by the California Department of Insurance on November 26, 2012 (the "California Insurance Order"). *See* Exchange Act Section 3(a)(39)(F) (incorporating Exchange Act Section 15(b)(4)(H) so as to include in the Exchange Act's definition of statutorily disqualified persons individuals that are subject to any final order of a state insurance commission that, among other things, "[b]ars such person from association with an entity regulated by such commission"). In December 2012, the Department of Insurance denied a request to reconsider the California Insurance Order. At the time of the hearing, Cota had started the process to reinstate his insurance license.

<sup>4</sup> Cota completed a work program instead of serving the jail sentence.

and they brought VL to the house several hours later. VL was intoxicated and upset, and Cota and his parents put VL to bed in the guest room. Several hours later, VL woke up, found Cota (who was sleeping in a separate room), and threw a cell phone at Cota's head. Cota stated that things "escalated rapidly" and VL grabbed his leg as he tried to walk out of the bedroom. Cota testified that VL suffered carpet burns as a result.

According to Cota, the argument died down, but continued early the next morning. Cota testified that VL "was upset and came up really close to my face and spit in my face." Cota testified that he immediately turned his head away from VL and his head "knocked her in the head, I guess her nose, and that's when she got hysterical and ran out the back door." Cota followed VL and asked her not to call the police, but VL got a ride to a local gas station and called the police and they subsequently arrested Cota.<sup>5</sup> Before the Hearing Panel, Cota denied hitting VL or intentionally hitting VL with his head. Cota repeatedly described the incident as a "struggle between us both," testified that he had marks on his thigh from VL, and that VL appeared "by my side for every court date that I had from May to September, saying that she was not going to testify against me because the argument was mutual."

VL's statement of the incident contained in the police report, however, paints a markedly different picture of the events underlying Cota's disqualifying event. According to the police report, Cota was the aggressor and he slapped her in the face, "head butted" her on the bridge of the nose, kicked her, and pulled her hair. Burkett described Cota's and VL's relationship as "volatile," having observed and talked to the couple.

In the ensuing weeks and months after the incident, Cota testified that the couple attempted to reconcile and went to counseling, but such efforts were unsuccessful.<sup>6</sup> Although Cota and VL have a son, and Cota has visitation rights, Cota no longer interacts with, or sees, VL (who has moved out of state).

The record shows that Cota complied with all of the terms of the court order and his probation, including completion of a 52-week batterer's program and a 26-week drug and alcohol outpatient program. In March 2015, the court granted Cota an early termination of his probation. Cota also testified that he has continued attending Alcoholics Anonymous meetings and continues to abstain from alcohol. Cota testified that alcohol played a major role in all of the negative events in his life during the past four or five years, and since he has given it up, his "life is a lot different."

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<sup>5</sup> The record shows that Cota's conviction for Preventing or Dissuading Witness or Victim from Testifying or Doing Other Acts related to him asking VL not to call the police after the incident.

<sup>6</sup> Cota also testified that he entered into the batterer's program shortly after his arrest instead of waiting until his convictions became final to take immediate steps to improve a bad situation.

### III. Background Information

#### A. Cota

##### 1. Employment History

Cota first registered in the securities industry as an investment company products and variable contracts limited representative in October 1996. He also passed the uniform securities agent state law examination in October 1996, and held an insurance license in California from February 1996 until it was revoked in November 2012. Cota was registered with the Firm from June 2003 until January 2013, when the Firm submitted a Uniform Termination Notice for Securities Industry Registration (“Form U5”) terminating Cota because of his statutory disqualification.<sup>7</sup> Cota has been associated with two other firms.

Prior to leaving the Firm in January 2013, Cota had approximately 200 customers (although Burkett testified that it was closer to 300 customers). Cota testified that his business focused on providing advice to school teachers and staff and selling them mutual funds and variable annuities. At the time of the hearing, Burkett was servicing Cota’s customers.

##### 2. Cota Fails to Timely Update His Form U4

Although Cota was arrested and charged with felonies on April 18, 2012, he failed to update his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) until November 20, 2012.<sup>8</sup> Consequently, in December 2013, FINRA issued Cota a Cautionary Action for failing to timely update his Form U4 to disclose his felony charges and submitting an inaccurate compliance attestation to the Firm in September 2012 stating that he had not been charged with a felony. Cota explained that he was unaware that he had to disclose all felony charges and was more familiar with disclosure requirements in the insurance industry (which he asserts only require disclosure of felony convictions). Cota further stated that at the time of his

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<sup>7</sup> Cota is not currently employed with the Firm. He testified that for the first year after his felony conviction, he had numerous court obligations that interfered with his ability to service his clients. Cota has supported himself through his savings and by doing odd jobs for friends.

<sup>8</sup> Question 14A(1) of Form U4 asks, “[h]ave you ever: (a) been convicted of or pled guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to any felony? [or] (b) been charged with any felony?” Article V, Section 2(c) of FINRA’s By-Laws requires that an associated person keep his Form U4 current at all times and to update information on the Form U4 within 30 days, unless an amendment involves a statutory disqualification in which case the amendment shall be filed not later than ten days after such disqualification occurs. Further, FINRA Rule 1122 states that, “[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.” We note that Cota also failed to timely disclose his September 26, 2012 no contest plea.

charges, he was not aware that he had been charged with felonies and he was hoping to have the charges dropped. Cota also testified that he reported the April 2012 incident and his arrest to Burkett shortly after it happened.<sup>9</sup>

### 3. Additional Criminal History

In March 2010, in another incident involving VL, Cota was arrested in Nevada on a charge of Battery (Domestic Violence)—Strangulation. Before the Hearing Panel, Cota testified that he and VL went to Las Vegas with several other couples. At dinner, both he and VL were drinking and got into a disagreement. They left dinner and went back to their hotel room. Cota further testified that they “were both, you know, very heated, the alcohol was very intense.” Cota went to kiss VL and she bit him, and he pushed her away on her shoulders (which left visible marks on VL). Cota stated that he left and got another hotel room, and was later arrested. In April 2010, the district attorney’s office declined to file formal charges against Cota and the charge was dismissed.

In August 2008, Cota was arrested and charged with driving under the influence in California (a misdemeanor). Cota pled no contest to a lesser misdemeanor charge in February 2009. A California court sentenced Cota to 90 days in jail, three years of probation, and a fine of \$707. The court suspended Cota’s jail sentence, and according to Cota’s criminal lawyer, ordered him to (among other things), “obey all laws” and attend and complete a 12-hour alcohol and drug program. Before the Hearing Panel, Cota testified that this incident occurred after dinner at a restaurant where he had a few glasses of wine. Cota testified that on his way home, he was stopped at a sobriety checkpoint, took a Breathalyzer test, and “blew right at the limit.”

### 4. Customer Complaint

In July 2006, a customer filed a complaint against Cota, Cota’s brother (then a registered representative at the Firm), and Burkett. The customer alleged there were withdrawals from her account that she did not consent to, and she sought \$33,615 in damages. The Firm settled this matter for \$9,900, and Cota and Burkett each contributed \$3,300 to this settlement. Cota testified that he inherited this customer from his brother, and the claim was based upon a loan agreement between his brother and the customer.

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<sup>9</sup> Before the Hearing Panel, Burkett testified that although Cota reported his arrest to him shortly after it occurred, Burkett did not think it had to be disclosed because he did not believe that it involved a felony or Cota’s securities or insurance business. Burkett later learned the matter involved felony charges after Cota pled no contest in September 2012. Burkett testified that he still did not require that Cota disclose the plea because Burkett believed that the charges might be dropped to misdemeanor charges, and he now understands that Form U4 requires more than simply the disclosure of a felony conviction. FINRA issued Burkett a Cautionary Action in connection with his failures to ensure that Cota kept his Form U4 current.

The record shows no other complaints, disciplinary proceedings, or arbitrations against Cota.

B. The Firm

The Firm is based in Minot, North Dakota, and it has been a FINRA member since 1981. The Application states that the Firm has 19 Offices of Supervisory Jurisdiction (“OSJs”), 159 branch offices, and that it employs 61 registered principals and 213 registered representatives. The Firm engages in a general securities business, and it does not employ any other statutorily disqualified individuals.

1. Regulatory Actions

In December 2011, the SEC issued against the Firm and its then president an Order Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (the “SEC Order”). The Firm agreed to findings that, from September 2006 through January 2009, it failed to perform reasonable due diligence on numerous private placement offerings (which turned out to be a Ponzi scheme and offering fraud) prior to recommending them to customers, in willful violation of Exchange Act Section 10(b), Exchange Act Rule 10b-5, and Section 17(a) of the Securities Act of 1933. The SEC censured the Firm and ordered that it comply with certain undertakings (including hiring an independent consultant to review, among other things, the Firm’s due diligence processes).<sup>10</sup> The Firm complied with the undertakings required of it.

In August 2011, and in connection with the same activity underlying the SEC Order, the Firm entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with FINRA for violations of NASD Rules 2310, 3010, and 2110 and FINRA Rule 2010. As a result, FINRA censured the Firm and ordered that it pay \$200,000 in restitution. The Firm complied with the terms of the AWC.

2. Routine Examinations of the Firm

In December 2015, FINRA issued the Firm a Cautionary Action and cited it for the following deficiencies: failing to develop and implement an adequate supervisory system and procedures addressing the sale of variable annuities; approving sales of variable annuities without having a reasonable basis to believe that the recommendations were suitable; failing to

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<sup>10</sup> The SEC Order caused the Firm to be statutorily disqualified, and the Firm filed an MC-400A with FINRA. The Firm’s sanctions, however, were no longer in effect within four months of filing the MC-400A, and FINRA was therefore not required to file a notice with the SEC pursuant to Exchange Act Rule 19h-1. *See* Exchange Act Rule 19h-1(a)(3)(iii)(B) (providing that FINRA need not file a notice with the SEC if the disqualification results from a finding that the firm engaged in a willful violation of the Exchange Act and the sanctions are no longer in effect).

accurately maintain books and records; failing to maintain an adequate supervisory system to ensure the accuracy of its books and records; failing to maintain evidence of verbal material event disclosures to customers; failing to test and verify various requirements during branch office inspections; failing to create an adequate supervisory system to supervise email correspondence; approving business cards or stationery that failed to comply with FINRA rules; and failing to conduct an adequate review of a representative's outside business activity. The Firm responded in writing that, where appropriate, it corrected the deficiencies noted in the Cautionary Action.

In January 2014, FINRA issued the Firm a Cautionary Action and cited it for failing to maintain accurate written supervisory procedures ("WSPs") relating to its registered representatives' use of consolidated statements and failing to timely furnish change of address notifications to customers. FINRA also cited the Firm's Clearwater, Florida office for failing to review incoming correspondence. The Firm responded in writing that, where appropriate, it corrected the deficiencies noted in the Cautionary Action.

In August 2012, the SEC identified deficiencies related to the Firm's failure to implement a system to ensure that its mutual fund customers were receiving the appropriate sales charge discounts and failing to timely complete inspections of its branch offices. The Firm responded in writing that, among other things, it would amend its examination schedule to ensure that all branch office inspections were timely conducted.

In December 2011, FINRA issued the Firm a Cautionary Action and cited it for the following deficiencies: failing to timely make Form U4 and Form U5 disclosures, failing to implement and enforce its WSPs because several registered representatives used non-Firm email accounts and listed non-Firm email accounts on correspondence, failing to timely notify FINRA of the Firm's reliance upon the Limited Size and Resource Exemption, and failing to adequately supervise a representative's activities. The Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action.

The record shows no other complaints, disciplinary proceedings, or arbitrations against the Firm.<sup>11</sup>

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<sup>11</sup> Member Regulation broadly asserts that the Firm has been named in 63 customer arbitrations since 1981, and that most of these complaints allege a failure to supervise. It further asserts that there have been 183 customer complaints filed against the Firm. The one specific example cited by Member Regulation involved a recent arbitration award rendered against the Firm totaling \$50,000, in which the customer alleged a failure to supervise and unsuitable recommendations. Carlson testified generally that there were many customer complaints and arbitrations against the Firm related to the matters underlying the SEC Order. For purposes of this decision, and given the lack of additional context in the record for these statistics, we have not considered these matters in rendering this decision.

#### **IV. Cota's Proposed Business Activities and Supervision**

The Firm proposes to employ Cota as an investment company products and variable contracts limited representative. Cota will work from a branch office located in Fresno, California. He will be compensated by the Firm on a commission basis.

The Firm initially proposed that Cota would be supervised on-site by Burkett. In April 2016, however, the Firm indicated that Carlson would serve as Cota's primary supervisor. Carlson testified that he serves as the Firm's chief compliance officer, president, and FINOP, and FINRA's Central Registration Depository ("CRD"®) indicates that Carlson is located in the Firm's home office in Minot, North Dakota. Carlson has been with the Firm since July 2002, and was previously associated with five firms. He became registered as a general securities representative in September 1998, as a general securities principal in August 2002, as a municipal securities principal in October 2002, as a registered options principal in February 2003, as a FINOP in June 2003, and as an equity trader limited representative in December 2003. Carlson also passed the uniform combined state law examination in September 1998. CRD shows that Carlson is engaged in two other businesses: fixed insurance sales (two hours per month) and chief executive officer of Capital Financial Holdings, Inc. (10 hours per week).<sup>12</sup>

CRD shows that a number of customers have filed complaints against Carlson. In November 2015, a customer filed a complaint against Carlson seeking \$2.16 million in damages. This matter remains pending.<sup>13</sup>

In April 2011, a customer filed a complaint against Carlson alleging improper recommendations, negligence, and breach of contract. The customer sought \$585,000 in damages. This matter was settled for \$10,208, and Carlson did not personally contribute to this settlement.

In April 2011, additional customers filed a complaint against Carlson alleging misrepresentations. The customers sought \$330,000 in damages. This matter was settled for \$4,463, and Carlson did not personally contribute to this settlement.

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<sup>12</sup> Although Carlson testified at the hearing, at the time he was not Cota's proposed primary supervisor. Consequently, whether Carlson has the time to supervise a statutorily disqualified individual such as Cota, given his numerous roles at the Firm and outside business activities, is unclear. It is also unclear how Carlson will supervise Cota from another office. Were we otherwise inclined to approve the Application, which we are not based upon Cota's recent and highly serious disqualifying event, as well as his additional criminal history and failures to timely update his Form U4 in connection with his disqualifying misconduct, we would have provided Carlson and the Firm an opportunity to clarify these issues.

<sup>13</sup> CRD does not indicate the nature of this complaint other than "lawsuit against entities and individuals involved with DBSI investments."



In December 2010, a customer filed a complaint against Carlson alleging fraud and negligence. The customer sought \$650,000 in damages. This matter was dismissed.

In December 2010, additional customers filed a complaint against Carlson alleging unsuitable investments and misrepresentations. The customers sought \$80,000 in damages. This matter was settled for \$2,200, and Carlson did not personally contribute to this settlement.

In November 2010, customers filed a complaint against Carlson alleging unsuitable investment recommendations and misrepresentations. The customers sought \$210,000 in damages. This matter was settled for \$9,240, and Carlson did not personally contribute to this settlement.

In September 2010, customers filed a complaint against Carlson alleging unsuitable recommendations. The customers sought \$2.2 million in damages. This matter was settled for \$27,060, and Carlson did not personally contribute to this settlement.

In September 2010, another customer filed a complaint against Carlson alleging negligence, breach of contract, failure to supervise, and fraud. The customer sought \$430,000 in damages. This matter was settled for \$9,460, and Carlson did not personally contribute to this settlement.

In September 2010, another customer filed a complaint against Carlson alleging unsuitable recommendations. The customer sought \$577,000 in damages. This matter was settled for \$16,148, and Carlson did not personally contribute to this settlement.

In June 2010, customers filed a complaint against Carlson alleging untrue statements or omissions. The customers sought \$489,000 in damages. This matter was settled for \$86,213, and Carlson did not personally contribute to this settlement.

In June 2010, additional customers filed a complaint against Carlson alleging misrepresentations and unsuitable recommendations. The customers sought \$200,000 in damages. This matter was settled for \$8,800, and Carlson did not personally contribute to this settlement.

In May 2010, customers filed a complaint against Carlson alleging breach of fiduciary duty. The customers sought \$300,000 in damages. This matter was settled for \$13,200, and Carlson did not personally contribute to this settlement.

In April 2010, customers filed a complaint against Carlson alleging misrepresentations and failure to disclose. The customers sought \$435,000 in damages. This matter was dismissed.

In March 2010, customers filed a complaint against Carlson alleging failure to supervise. The customers sought \$1.5 million in damages. This matter was settled for \$75,000, and Carlson did not personally contribute to this settlement.

In March 2010, additional customers filed a complaint against Carlson alleging misrepresentations. The customers sought \$290,000 in damages. This matter was settled for \$86,213, and Carlson did not personally contribute to this settlement.

In March 2010, additional customers filed a complaint against Carlson alleging “misconduct associated with recommendations and sales of fraudulent investment products.” The customers sought \$999,000 in damages. This matter was dismissed.

In February 2010, customers filed a complaint against Carlson alleging misrepresentations. The customers sought \$850,000 in damages. This matter was settled for \$10,120, and Carlson did not personally contribute to this settlement.

In February 2010, an additional customer filed a complaint against Carlson alleging unsuitable investments. The customer sought \$108,000 in damages. This matter was dismissed.

In November 2009, customers filed a complaint against Carlson alleging unsuitable investments. The customers sought \$2.05 million in damages. This matter was settled for \$20,000, and Carlson did not personally contribute to this settlement.

In November 2009, additional customers filed a complaint against Carlson alleging unsuitable investments. The customers sought \$5.197 million in damages. This matter was settled for \$64,240, and Carlson did not personally contribute to this settlement.

In February 2008, customers filed a complaint against Carlson alleging unsuitable investments, misrepresentations and omissions, negligence, breach of contract, and breach of fiduciary duty. The customers sought \$275,000 in damages. This complaint was dismissed.

In addition to these customer complaints, Carlson filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of North Dakota in October 2010. CRD indicates that he received a discharge of his debts in August 2011, although CRD also states that “no debts are discharged in this action.”

In the Application, the Firm further proposed that Shiva Pourvakil (“Pourvakil”) serve as Cota’s backup supervisor. After the hearing, Member Regulation notified the Hearing Panel that as of early February 2016, Pourvakil no longer works for the Firm. As of the date of this decision, the Firm has not proposed a new backup supervisor for Cota.

The Firm submitted the following proposed heightened plan of supervision:

- \*1. The written supervisory procedures for the Firm will be amended to state that Burkett will be Cota's primary supervisor;<sup>14</sup>
- \*2. Cota will not act in a supervisory capacity;
- \*3. Cota will not maintain any discretionary accounts;
- \*4. Burkett will supervise Cota on-site at the Firm's branch office, located in Fresno, California;
- \*5. On a quarterly basis (March 31st, June 30th, September 30th, and December 31st), Cota will certify in writing to Burkett that he has read the Firm's current Code of Conduct and other applicable Firm policies pertaining to his obligations to disclose legal and regulatory matters to the Firm, and that he fully understands his obligations thereunder. Burkett will maintain copies of Cota's certifications and will keep them segregated for ease of review during any statutory disqualification examination;
- \*6. On a quarterly basis, Cota will certify in writing to Burkett that he is in full compliance with all of his disclosure reporting obligations pursuant to FINRA's rules. Burkett will maintain copies of Cota's certifications and will keep them segregated for ease of review during any statutory disqualification examination;
- \*7. Burkett will promptly alert the Firm's Chief Compliance Officer and Legal Department of any indication that Cota is under the influence of alcohol while at work, including but not limited to unexplained lateness or absences, or other erratic behavior;

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<sup>14</sup> The Firm did not submit a revised heightened supervisory plan when it changed Cota's primary supervisor to Carlson in April 2016, and as stated herein the Firm has not named a replacement backup supervisor for Cota. Further, it is unclear how certain provisions of the plan (e.g., Items 7, 12, and 13) will work given Carlson's position as the Firm's chief compliance officer. Similarly, it is unclear how Items 4, 7, and 14 will work given that Carlson is based in Minot, North Dakota. Member Regulation also argues that the Firm's proposed heightened supervisory plan is deficient in other material respects. Were we otherwise inclined to approve this Application, which we are not, we would have given the Firm an opportunity to address these deficiencies.

- \*8. Burkett will review and initial all of Cota's trade blotters weekly. Burkett will review and approve any requests to issue checks or funds from any of Cota's customers' accounts. Burkett will keep copies of the reviewed trade blotters and check/wire requests segregated for ease of review during any statutory disqualification examination;
- \*9. Burkett will review and pre approve each securities account prior to the opening of the account by Cota. Account paperwork will be documented as approved with a date and signature and maintained at the branch office in Fresno, as well as the Firm's home office. Burkett will keep copies of the account paperwork segregated for ease of review during any statutory disqualification examination;
- \*10. Burkett will review Cota's incoming written correspondence (which will include e-mail communications) upon its arrival and will review Cota's outgoing correspondence (including e-mail communications) before it is sent;
- \*11. For the purposes of client communication, Cota will only be allowed to use an e-mail account that is held at the Firm, with all emails being filtered through the Firm's e-mail system. If Cota receives a business related email message in another e-mail account outside the Firm, he will immediately deliver that message to the Firm's e-mail account. Also, Cota will inform the Firm of all outside e-mail accounts which he maintains and will provide the Firm access to the accounts upon request. The e-mail messages are to be preserved and kept segregated for ease of review during any statutory disqualification examination;
- \*12. Burkett must certify quarterly to the Compliance Department of the Firm that he and Cota are in compliance with all of the above conditions of heightened supervision to be accorded to Cota;
- \*13. All complaints pertaining to Cota, whether verbal or written, will be immediately referred to Burkett for review, and then to the Compliance Department of the Firm. Burkett will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. Documents pertaining to these complaints will be kept segregated for ease of review during any statutory disqualification examination;
- \*14. If Burkett is to be on vacation or out of the office for an extended period, Pourvakil will act as Cota's interim supervisor; and
- \*15. For the duration of Cota's statutory disqualification, the Firm must obtain prior approval from Member Regulation if it wishes to change Cota's responsible supervisor from Burkett to another person.

## V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied, because, in its view: (1) the disqualifying event is recent, serious, and “reflects repeated violent behavior,” which establishes that Cota has a propensity to engage in illegal misconduct and disregard rules and regulations; (2) Cota failed to timely disclose the felony charges and no contest plea, which “raises significant questions concerning Cota’s ability to comply with securities rules and regulations;” (3) Cota’s characterization of the events underlying his statutory disqualification are misleading and untrustworthy because he described the incident as an “argument” followed by a “struggle,” and he has additional criminal history during a prior probationary period (which show Cota’s inability to conform his behavior to acceptable norms and comply with securities rules and regulations); (4) the Firm’s regulatory history indicates that it does not have the ability to effectively supervise Cota; and (5) the proposed heightened supervisory plan is deficient.<sup>15</sup>

## VI. Discussion

### A. The Legal Standard

In reviewing this type of application, we consider whether the particular felony at issue, examined in light of the circumstances related to the felony, and other relevant facts and circumstances, creates an unreasonable risk of harm to the market or investors.<sup>16</sup> We assess the totality of the circumstances in reaching a judgment about Cota’s future ability to act in a manner that comports with FINRA’s requirements for high standards of commercial honor and just and equitable principles of trade in the conduct of his business. In so doing, the sponsoring firm has the burden of demonstrating that the proposed association is in the public interest despite the disqualification. *See Pedregon*, 2010 SEC LEXIS 1164, at \*16 & n.17; *Continued Ass’n of X*, SD06002, slip op. at 5 (NASD NAC 2006), available at [http://www.finra.org/sites/default/files/nacdecision/p036476\\_0.pdf](http://www.finra.org/sites/default/files/nacdecision/p036476_0.pdf) (redacted decision).

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<sup>15</sup> Member Regulation also argued, when Burkett was Cota’s proposed primary supervisor, that Burkett “has already demonstrated that he cannot adequately supervise Cota” and he has insufficient time to supervise Cota.

<sup>16</sup> *See Frank Kufrovich*, 55 S.E.C. 616, 625 (2002) (upholding FINRA’s denial of a statutory disqualification applicant who had committed non-securities related felonies “based upon the totality of the circumstances” and FINRA’s explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors); *see also Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at \*20 & n.21 (Mar. 26, 2010) (stating that FINRA’s “analysis goes beyond the circumstances relating to the felony, and also encompasses circumstances relating to the proposed association”); *Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at \*14 (July 17, 2009) (stating that FINRA “appropriately weigh[ed] all the facts and circumstances surrounding [the applicant’s] felony conviction and [the firm’s] proposed supervisory plan”).

We examine the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, whether the person has engaged in any intervening misconduct, and the potential for future regulatory problems, as well as other unique circumstances in the application. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person.

After carefully reviewing the entire record in this matter, we find that the Firm has failed to demonstrate that Cota's association with the Firm is in the public interest. We conclude that Cota's recent and highly serious disqualifying event, as well as his additional criminal history and failures to timely update his Form U4 in connection with his disqualifying misconduct, demonstrate that he lacks the character and judgment necessary to participate in the securities industry in a compliant manner. Consequently, we deny the Application for Cota to associate with the Firm as an investment company products and variable contracts limited representative.

#### B. Analysis

Cota's felonies involved highly serious misconduct and convictions for domestic violence and dissuading a witness from reporting domestic violence. Regardless of whether Cota's testimony at the hearing or VL's version of events as reflected in the police report more accurately captures the events underlying Cota's felony convictions, both versions of these events are disturbing, and VL suffered multiple injuries as a direct result of Cota's misconduct. Further, Cota's felony convictions are recent. We acknowledge that Cota has taken steps to address the issues that resulted in his felony convictions and the California court terminated Cota's probation several months early. Insufficient time has passed, however, to enable Cota to demonstrate that the change in his behavioral pattern—with respect to both alcohol abuse and a propensity for domestic violence—is fundamental and long-lasting and that he can conduct himself in a responsible and compliant fashion in the securities industry.<sup>17</sup>

Cota's actions, although not securities-related, cast doubt on his judgment and character and lead us to question his ability to act in a trustworthy and responsible manner in the securities industry. The Commission has consistently recognized that "in order to ensure protection of investors, the NASD may demand a high level of integrity from securities professionals." *Kufrovich*, 55 S.E.C. at 627; *see also William J. Haberman*, 53 S.E.C. 1024, 1029 (1998) (holding that to protect investors and maintain investor confidence in the markets, securities professionals are obliged to maintain high ethical standards), *aff'd*, 205 F.3d 1345 (8th Cir. 2000) (table). Cota's 2010 arrest in Nevada on a charge of Battery (Domestic Violence)—Strangulation (conduct nearly identical to his 2012 disqualifying felony convictions that resulted in visible marks on VL's neck), as well as his 2008 misdemeanor conviction involving alcohol,

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<sup>17</sup> We also note that a large portion of Cota's rehabilitation efforts were imposed upon him by the court as part of his sentence.

reinforce our concerns regarding Cota's judgment and character and cast further doubt upon his ability to act in a trustworthy and responsible manner going forward.

Likewise, Cota's failure to timely update his Form U4 to reflect his April 2012 felony charges and his September 2012 plea causes us to question Cota's ability or willingness to comply with securities rules and regulations. The Commission has stated that Form U4 "is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public." *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*25-26 (Nov. 9, 2012). Cota, as a registered person, had an obligation to ensure that the information in his Form U4 was accurate and up to date. *See, e.g., Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents [to FINRA] has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994) (table).

Rather than promptly update his Form U4 to reflect his April 2012 felony charges and his September 2012 plea to the felony charges, Cota only updated his Form U4 in November 2012. *See* FINRA's By-Laws, Article V, Section 2(c) (requiring an associated person to update his Form U4 within 30 days, unless an amendment involves a statutory disqualification in which case the amendment must be filed within 10 days); FINRA Rule 1122 (providing that an associated person must keep his Form U4 current). As a result of Cota's failure to timely update his Form U4, FINRA issued Cota a Cautionary Action. Cota's explanations for these failures—that he was unaware of FINRA's disclosure requirements and was initially unaware that he had been charged with felonies and hoped to have the charges dropped—ring hollow and afford Cota no relief from his disclosure obligations.

## **VII. Conclusion**

In sum, we have determined that, based upon the totality of facts and circumstances before us, the Firm has failed to demonstrate that Cota's association with the Firm is in the public interest and Cota's association with the Firm would create an unreasonable risk of harm to the market or investors. We therefore deny the Application for Cota to associate with the Firm as an investment company products and variable contracts limited representative.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith  
Senior Vice President and Corporate Secretary