BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association of Kimberly Springsteen-Abbott as an Associated Person with Commonwealth Capital Securities Corp.	Notice Pursuant to Section 19(d) Securities Exchange Act of 1934 SD-2132 May 24, 2018

I. Introduction

On September 28, 2016, Commonwealth Capital Securities Corp. (the "Firm") filed a Membership Continuance Application (the "Application") with FINRA's Department of Registration and Disclosure ("RAD"). The Application requests that FINRA permit Kimberly Springsteen-Abbott ("Springsteen-Abbott"), a person subject to a statutory disqualification, to continue to associate with the Firm as its sole indirect owner. On February 21, 2018, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. Springsteen-Abbott testified, and she was accompanied by the Firm's counsel, Steven M. Felsenstein, Esq., Donald M. Cohen, Esq., and Elaine C. Greenberg, Esq. Springsteen-Abbott's proposed primary supervisor and spouse, Henry Abbott ("Abbott"), proposed alternate supervisor, James Pruett ("Pruett"), and Ted Cavaliere ("Cavaliere") also testified in support of the Application. Ann-Marie Mason, Esq., Emily R. Goebel, Esq., Sora Lee, Esq., and Lorraine Lee appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

For the reasons explained below, we deny the Application.[1]

II. The Statutorily Disqualifying Event

Under FINRA's By-Laws, no person shall, without FINRA's approval, become associated with a member, continue to be associated with a member, or transfer association to another member if such person is or becomes subject to any "statutory disqualification" as such

[1] 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 ("NAC").

term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"). *See* FINRA By-Laws, Art. III, §§ 3, 4. Exchange Act Section 3(a)(39) 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 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 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 statutorily disqualify event.

III. Procedural Background

FINRA's July 20, 2017 decision barring Springsteen-Abbott followed a remand from the Securities and Exchange Commission ("Commission") of an earlier decision in that disciplinary matter.

On August 23, 2016, the NAC issued a final FINRA 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. *See Dep't of Enforcement v. Springsteen-Abbott*, Complaint No. 2011025675501, 2016 FINRA Discip. LEXIS 39 (FINRA NAC Aug. 23, 2016). 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. *Id.* at *43.

On August 30, 2016, RAD informed the Firm that Springsteen-Abbott was statutorily disqualified because of the August 23, 2016 decision that barred her from associating with any FINRA member in any capacity. RAD also informed the Firm that Springsteen-Abbott's ownership of the Firm made her a person associated with a member and that she could not continue to associate with the Firm without FINRA's approval. On September 28, 2016, the Firm filed the Application initiating this membership continuance proceeding and requesting that FINRA permit Springsteen-Abbott to continue to associate with the Firm despite her status as a statutorily disqualified person.

Prior to filing the Application, however, Springsteen-Abbott appealed the NAC's August 23, 2016 decision to the Commission. On March 31, 2017, the Commission remanded the NAC's 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 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. 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.

Following the Commission's remand, the Hearing Panel in this membership continuance proceeding adjourned further consideration of the Application, and it requested that the Firm and Member Regulation file briefs that addressed the effect, if any, of the Commission's remand of the NAC's August 23, 2016 decision on Springsteen-Abbott's status as a statutorily disqualified person. Prior to reaching a decision on that issue, however, the NAC issued its July 20, 2017 remand decision, which again barred Springsteen-Abbott and rendered the issue addressed by the parties' briefs moot. *See Dep't of Enforcement v. Springsteen-Abbott*, Complaint No. 2011025675501r, 2017 FINRA Discip. LEXIS 23 (FINRA NAC July 20, 2017), *appeal docketed*, SEC Admin. Proceeding No. 3-17560r (Aug. 14, 2017).

The NAC's July 20, 2017 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 period. *See id.* at *3. The NAC reaffirmed the unqualified associational bar that it 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. *Id.* at *79.

Springsteen-Abbott thereafter appealed the NAC's remand decision to the Commission, but she did not request that the Commission stay the bar imposed on her by FINRA. Because the bar imposed by the NAC's remand decision became immediately effective, the Hearing Panel advised the parties, on November 14, 2017, that this membership continuance proceeding would progress to a hearing, but it first allowed the Firm and Member Regulation to supplement, respectively, the Application and FINRA staff's recommendation.

On December 21, 2017, the Firm requested that the Hearing Panel adjourn this matter indefinitely pending the Commission's resolution of Springsteen-Abbott's appeal of the NAC's remand decision. The Hearing Panel denied the Firm's request.[2] On February 1, 2018, the Firm moved to recuse the Hearing Panel's attorney-advisor because his name appeared on a legal brief to the Commission in connection with Springsteen-Abbott's appeal of the disqualifying disciplinary decision. The Hearing Panel denied this request as well, finding that the Firm failed to demonstrate that the attorney-advisor's fairness could be reasonably questioned in this statutory disqualification matter.[3]

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[2] We agree with the Hearing Panel's decision. Springsteen-Abbott's pending Commission appeal does not render these eligibility proceedings premature or alter her status as a statutorily disqualified individual. *Cf. Robert J. Sayegh*, 52 S.E.C. 1110, 1112 (1996) (holding that the pendency of an appeal of a permanent injunction "would not alter the factual existence of the injunction and its public interest implications" (internal quotation marks omitted)); *Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992) ("Just as the court was empowered to act quickly in this case, the Commission and the NASD are also authorized to take prompt action for the protection of public investors prior to a final adjudication on the merits").

[3] We find no error in the Hearing Panel's decision. *Cf. Robert Tretiak*, 56 S.E.C. 209, 232 (2003) ("[T]he hearing panels and the NAC, not counsel, [make] the final decisions . . . ."); *Dep't of Enforcement v. Michael Lee Bullock*, Complaint No. 2005003437102, 2011 FINRA

[Footnote continued on next page]

The Hearing Panel conducted a hearing to consider the Application on February 21, 2018. The parties presented closing arguments to the Hearing Panel by telephone conference on March 2, 2018.

IV. Factual Background

A. Springsteen-Abbott

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. CCC is the sole owner of Commonwealth of Delaware, Inc. ("CDI"), an intermediate holding company that solely owns the Firm 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. The employees of CCC conduct the work of the Firm and CIGF, such that all employees of the Firm and CIGF are also employees of CCC.

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 Firm, which she formed as its chief executive officer in 1997. During the period of misconduct that resulted in her statutory disqualification, and until the NAC's August 23, 2016 decision, Springsteen-Abbott served as the Firm's chairperson, chief executive officer, and chief compliance officer. During this period, she registered with the Firm as a general securities representative, direct participation programs representative, and a direct participation programs principal.[4]

Springsteen-Abbott has been the subject of one regulatory matter in addition to the FINRA disciplinary matter that resulted in her bar from the securities industry. 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 approved as CIGF's chief executive officer.[5]

The Commission based its order on findings that, from 2006 through 2011, CIGF made misleading disclosures concerning the expenses it charged to the Commonwealth Funds. CIGF represented in the offering documents that the salary expenses of CIGF's and CCC's controlling persons would not be charged to the Commonwealth Funds.

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Discip. LEXIS 14, at *52-53 (FINRA NAC May 6, 2011) (rejecting unsubstantiated claims of bias and holding NAC de novo review cures bias if any existed).

[4] The Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") for Springsteen-Abbott on September 7, 2016.

[5] In addition to her leadership roles with CCC and the Firm, Springsteen-Abbott has served as CIGF's chairperson and chief executive officer since 2006.

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. The documentation for each of the Commonwealth Funds, including their public Forms 10-K and 10-Q, disclosed the aggregate amount of the reimbursable expenses charged to each of the Commonwealth Funds, but it did not break down those expenses such that an investor would know that they included a portion of the salaries of all CIGF employees, executive officers, and directors other than Springsteen-Abbott. The Commission further found that, as a result of the foregoing conduct, Springsteen-Abbott and CIGF 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.

For their misconduct, 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. The Commission further 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.

B. The Firm

The Firm has been a FINRA member since March 1997. It has one office, located in Clearwater, Florida, which is also its Office of Supervisory Jurisdiction. The Firm's office is within a larger suite of offices shared by all of the Commonwealth entities, including CCC.

The Firm is a special purpose broker-dealer established to enable the Commonwealth Funds sponsored by CCC to distribute their securities in public or private offerings. The Firm serves as the introducing broker-dealer for the Commonwealth Funds, offering the funds on a wholesale basis through participating broker-dealers. It does not have any customers or hold any customer accounts.

The Application states that the Firm has 11 employees and two registered principals, Abbott and Pruett. It does not currently employ any other statutorily disqualified individuals. All of the employees of the Firm, several of whom are members of Springsteen-Abbott's family, are also employees of CCC. The Firm has an expense sharing agreement with CCC by which CCC pays many expenses of the Firm, including all employee salaries, rent, and other office expenses. The Firm is also dependent on capital infusions from CCC to operate. Springsteen-

Abbott, as sole owner of CCC, authorizes all expenses paid for and capital contributions made to the Firm, and she is thus central to funding the Firm's operations.[6]

The Firm represents that it is not currently conducting business with any third parties and does not intend to engage in any fund offerings during the "proximate future." It further represents that it is currently staffed with only those "essential employees" necessary to maintain the Firm's books and records, investor services, and other legal and compliance activities. 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.

The Firm has not been the subject of any regulatory or disciplinary matters. FINRA conducted examinations of the Firm in 2014, 2015, 2016, and 2017. FINRA closed each of those exams with either no exceptions identified or no further action taken against the Firm.

V. Springsteen-Abbott's Proposed Activities and the Firm's Proposal for Her Heightened Supervision

A. Springsteen-Abbott's Proposed Continued Association with the Firm

The Firm requests that FINRA permit Springsteen-Abbott, a statutorily disqualified person, to continue her association with the Firm as its sole indirect owner. The Firm proposes this "limited association" so that Springsteen-Abbott, in her role as the sole owner of CCC, can continue to fund the Firm's operations, which it asserts is a benefit to the investors of the Commonwealth Funds.

The Firm represents that Springsteen-Abbott no longer participates in the daily operations or supervision of the Firm. 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.

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]." 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.

Also in support of the Application, the Firm represents that CCC effected several corporate changes to remove Springsteen-Abbott from "control" of the Firm. 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

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[6] The Firm represents that, because CCC operates the Firm to support the activities of the Commonwealth Funds, the Firm is not a "profit center" for CCC and operates generally on a break-even or loss basis. CCC, in contrast, has consistently been profitable.

associating with any FINRA member in any capacity. 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 Firm.

The meeting minutes reflect also that the CCC board, in accordance with Springsteen-Abbott's recommendations, adopted a number of resolutions. First, the CCC board established a "separate" board of directors for the Firm to assume "total responsibility" for the Firm's operations.[7] Second, the CCC board elected Abbott, Pruett, and Lynn Whatley, an executive vice-president of CCC, as members of the Firm's board, and it designated Abbott as its chairperson. Finally, the CCC board appointed Abbott to serve as the Firm's chief executive officer and Pruett to serve as the Firm's chief compliance officer.

B. Springsteen-Abbott's Proposed Primary Supervisor

The Firm proposes Abbott, Springsteen-Abbott's husband of 10 years, to serve as her primary supervisor. Abbott joined CCC in 1998, and he became president of the company in 2006. 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.[8]

Abbott also began working for the Firm in 1998, and he became a vice-president of the Firm in 2006.[9] As noted above, on August 24, 2016, he was appointed chairperson of the Firm's board of directors and the Firm's chief executive officer.[10] He further holds the title of president.[11] Abbott has been registered as a general securities representative and general securities principal with the Firm since 1998. He has also been registered with the Firm as an operations professional since 2011. He has not previously supervised a person subject to a statutory disqualification or implemented a plan of heightened supervision.

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Abbott.

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[7] Prior to August 24, 2016, the boards of the Commonwealth entities held their meetings on a consolidated basis. The Application describes the new Firm board as "self-perpetuating."

[8] On August 24, 2016, when it effected changes that purported to separate Springsteen-Abbott from the Firm, 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.

[9] Prior to joining the Firm, Abbott was associated with another FINRA member from June 1995 to March 1997 and registered with that broker-dealer as a general securities representative and general securities principal.

[10] Abbott is the sole member of the executive committee of the Firm's board of directors.

[11] Abbott is also the president of CIGF, and he has been a member of the CIGF board of directors since at least 2006.

C. The Proposed Backup Supervisor

The Firm proposes Pruett to serve as Springsteen-Abbott's alternate supervisor. Pruett joined CCC in 2002, and he is a senior vice-president of the company, overseeing compliance functions. He has served as secretary, and a non-voting member, of CCC's board since at least 2008.

Pruett has been associated with the Firm since 2002, and he is registered with the Firm as a direct participation programs representative and a direct participation programs principal.[12] As noted above, Pruett has served as a member of the Firm's board of directors, and as its chief compliance officer, since August 24, 2016.[13] He has not previously supervised a person subject to a statutory disqualification or implemented a plan of heightened supervision.

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Pruett.

D. The Firm's Proposed Heightened Supervisory Plan

The Firm submitted a proposed heightened supervisory plan with the Application. It provides:

1. The written supervisory procedures for the Firm will be amended to state that Henry Abbott ("Supervisor") is the primary supervisor responsible for ensuring that [Springsteen-Abbott] complies with the Non-Participation Agreement;

2. [Springsteen-Abbott] will not maintain discretionary accounts;

3. [Springsteen-Abbott] will not act in any supervisory capacity;

4. Kimberly Springsteen-Abbott will not associate with the Firm office, she will be supervised by Supervisor in the Firm branch office located at Clearwater, Florida;

5. Ms. Springsteen-Abbott will not open any investor accounts;

6. Supervisor will review Ms. Springsteen-Abbott's incoming written correspondence (which would include email communications) as they pertain to the Firm upon its arrival and Ms. Springsteen-Abbott will not send any outgoing correspondence to any registered member;

7. Supervisor will ensure Ms. Springsteen-Abbott does not write any order tickets or initiate any offers or sales;

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12 Pruett was not associated with any other FINRA member prior to joining the Firm.

13 Pruett first became a compliance officer of the Firm in 2005.

8. Ms. Springsteen-Abbott must disclose to Supervisor details related to outside sales activity if any occur. The disclosure must contain [Springsteen-Abbott's] activity log, phone call log, appointment log and to-do list;

9. If Supervisor is to be on vacation or out of the office for an extended period, James Pruett, CCO, will act as [Springsteen-Abbott's] interim supervisor;

10. All complaints pertaining to Ms. Springsteen-Abbott while a registered member, whether verbal or written, will be immediately referred to [S]upervisor for review, and then to the Compliance Department. Supervisor 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 should be kept segregated for ease of review;

11. For the duration of Ms. Springsteen-Abbott's statutory disqualification, the Firm must obtain prior approval from Member Regulation if they wish to change [Springsteen-Abbott's] responsible supervisor from Supervisor to another person; and

12. Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Compliance Department of the Firm that [S]upervisor and Ms. Springsteen-Abbott are in compliance with all of the above conditions of heightened supervision to be accorded Ms. Springsteen-Abbott.

VI. Member Regulation's Recommendation

Member Regulation recommends that we deny the Application. Member Regulation asserts that FINRA recently barred Springsteen-Abbott and the disqualifying event involved an egregious violation of the securities laws. Member Regulation also avers that the Firm is not capable of independently supervising Springsteen-Abbott, and that the heightened supervisory plan it proposed is inadequate. Finally, Member Regulation argues that Springsteen-Abbott continues to engage in misconduct by impermissibly associating with the Firm, despite the bar that currently prohibits her from associating with any FINRA member in any capacity.

VII. Discussion

In evaluating the Application, we assess whether the Firm has demonstrated that the proposed continued association of Springsteen-Abbott, a statutorily disqualified individual, is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See* FINRA By-Laws, Art. III, § 3(d) (providing that FINRA may approve the association of a statutorily disqualified person if such approval is consistent with the public interest and the protection of investors); *see also Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"). In cases such as this, involving an unqualified bar imposed by FINRA, the bar is "intended to prohibit completely a person's ability to engage in any future securities business with any member firm, thus precluding re-entry into

the securities industry absent extremely unusual circumstances." *See Ass'n of X*, Redacted Decision No. SD01016, slip op. at 4 (NASD NAC 2001), http://www.finra.org/sites/default/files/NACDecision/p012616_0.pdf. The Firm must therefore make "an extremely strong showing" for us to conclude that approving the Application serves the public interest. *See Ass'n of X*, Redacted Decision No. SD11003, slip op. at 6 (FINRA NAC 2011), http://www.finra.org/sites/default/files/NACDecision/p126106_0_0.pdf.

We have considered the entire record in this matter, and we find that the Firm has fallen far short of meeting its burden. We therefore deny the Application to permit Springsteen-Abbott's continued association with the Firm. We base our denial on several reasons: the Firm's decision to allow Springsteen-Abbott to continue to associate with it while she is barred; the nature and gravity of Springsteen-Abbott's statutorily disqualifying misconduct, and the time elapsed since its occurrence; and the inadequacy of the Firm's proposed plan of supervision.

A. Springsteen-Abbott Continues to Associate with the Firm While Barred

FINRA's By-Laws prohibit a statutorily disqualified individual from associating with a member without approval from FINRA. *See* FINRA By-Laws, Art. III, §§ 3, 4. FINRA therefore has plainly stated, "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." *See General Information on FINRA's Eligibility Requirements,* http://www.finra.org/industry/general-information-finras-eligibility-requirements (emphasis in original).

There is no dispute: Springsteen-Abbott is subject to a statutory disqualification because of FINRA's decision to bar her. *See* Exchange Act Section 3(a)(39)(A) (defining "statutory disqualification" to include a bar or suspension from associating with a member of any self-regulatory association). There is also no dispute that Springsteen-Abbott continues to associate with the Firm despite her disqualification and while the Application is pending.[14]

Springsteen-Abbott's continued association with the Firm while disqualified is a serious violation of FINRA rules. *See In the Matter of the Ass'n of Marc N. Jaffe as a Gen. Sec. Representative with Integrity Brokerage Servs., Inc.*, SD-2103, slip op. at 17 (FINRA NAC May

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[14] FINRA's By-Laws define a "person associated with a member" or "associated person of a member" as "a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether such person is registered or exempt from registration." FINRA By-Laws Art. I(rr). FINRA has interpreted the meaning of the term "associated person" broadly. *See Dist. Bus. Conduct Comm. v. Paramount Invs. Int'l, Inc.*, Complaint No. C3A940048, 1995 NASD Discip. LEXIS 248, at *12 (NASD NBCC Oct. 20, 1995). The Firm admits that Springsteen-Abbott remains associated with the Firm by virtue of the fact that she controls the Firm as its sole indirect owner. *See* FINRA By-Laws Art. I(h) (defining "controlling" to include, presumptively, any person who is the owner of 20 percent or more of the voting securities of a company); *see also* 17 C.F.R. 240.19h-1(f)(2) ("The term *control* shall mean the power to direct or cause the direction of the management or policies of a company whether through ownership of securities, by contract or otherwise . . . .) (emphasis in original).

16, 2017), http://www.finra.org/sites/default/files/NAC_SD-2103_Mark_Jaffe_IBS_031617.pdf ("Jaffe engaged in serious misconduct after entry of the 2015 AWC by improperly associating with the Firm while the Application was pending."); *see also Paramount*, 1995 NASD Discip. LEXIS 248, at *25 ("We believe that . . . the association of the statutorily disqualified person with a member firm is one of the most serious regulatory violations."). Her conduct provides abundant justification for us to deny the Application. *See Jaffe*, SD-2103, slip op. at 17 (denying an application for membership continuance because the statutorily disqualified person's association with the member created an unreasonable risk of harm to investors where, among other things, the person improperly associated with the firm while the application was pending); *Ass'n of X*, Redacted Decision No. SD11001, slip op. at 15-16 (FINRA NAC 2011), http://www.finra.org/sites/default/files/NACDecision/p126105_0_0.pdf (denying an application for an individual to associate with a member firm notwithstanding his statutory disqualification where the individual associated with the member prior to the application's approval); *see also Leslie Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *59 (Sept. 13, 2010) (affirming denial of a membership continuance application where the disqualified person engaged in intervening misconduct by improperly associating with the firm while the subject of a Commission bar order).

We find it troubling that the Firm and Abbott, its chief executive officer and the proposed primary supervisor, have permitted Springsteen-Abbott to improperly associate with the Firm without FINRA's approval. *See Jaffe*, SD-2103, slip op. at 19 ("We are also troubled that the Firm and [the proposed primary supervisor] permitted Jaffe to improperly associate with it while the Application remained pending."). In support of its decision, the Firm refers us to a statement concerning the eligibility process that appears on FINRA's website, and which reads "[i]f a person is currently associated with a FINRA member at the time the disqualifying event occurs, the person **may be** permitted to continue to work in certain circumstances, provided the employer member promptly files a written application with FINRA seeking permission to continue that person's employment with the member firm." *General Information on FINRA's Eligibility Requirements*, *supra* (emphasis in original). As we have made clear previously, however, this statement does not apply to cases, like this one, where the disqualified individual is the subject of an unqualified bar from associating with a FINRA member.[15] *See Ass'n of X*, Redacted Decision No. SD11003, slip op. at. 5 n.3 ("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 filing of the Application did not effect, as the Firm necessarily suggests, a stay of Springsteen-Abbott's bar from the securities industry. *See id.*; *see also Jaffe*, SD-2103, slip op. at 17 ("Jaffe, as a statutorily disqualified individual, was not permitted to associate with the Firm until FINRA approved the application."). The Firm may not allow Springsteen-Abbott to

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[15] It applies instead to those cases in which an individual has already served a time-limited sanction or whose statutorily disqualifying event does 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, *appeal docketed*, SEC Admin. Proceeding No. 3-18143 (Aug. 23, 2017); *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.

associate with it in any capacity, including a clerical or ministerial capacity, which is inconsistent with the bar imposed on her by FINRA. *See* FINRA Rule 8311(a) ("If 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."). Any assertion to the contrary contravenes the purpose of those FINRA rules that govern the association of a statutorily disqualified individual with a FINRA member. *See Ass'n of X*, Redacted Decision No. SD11001, slip op. at 13.

Faced with a FINRA decision that sought to protect the investing public, the Firm, which Abbott now heads, chose to file the Application to avoid the real and immediate effects of the unqualified bar imposed on Springsteen-Abbott. This conduct leads us to conclude that her continued association with the Firm is not in the public interest. It creates a perverse risk of harm to the market and investors and demonstrates both an unreasonable failure to abide by regulatory requirements and the potential for future regulatory problems. The Firm's allowance of Springsteen-Abbott's continued association indicates a palpable aversion to abide by the NAC's decision and leaves Springsteen-Abbott in a position that permits her to act as if FINRA never imposed sanctions for her misconduct.

B. Springsteen-Abbott's Misconduct Was Serious and Recent

We find that the seriousness of the misconduct underlying Springsteen-Abbott's statutory disqualification, and the recent nature of the FINRA decision barring her permanently from the securities industry, further supports denying the application. *See Nicholas S. Savva and Hunter Scott Financial, LLC*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at *57 (June 26, 2014) (holding that FINRA properly considered that the consent order forming the basis of an individual's statutory disqualification stemmed from allegations of serious, securities-related misconduct); *In the Matter of the Continued Ass'n of Craig Scott Taddonio with Meyers Assocs., LP*, SD-2117, slip op. at 26 (FINRA NAC Mar. 8, 2017), http://www.finra.org/sites/default/files/NAC_SD-2117_Taddonio-Meyers-Associates_030817.pdf (denying membership continuance application based upon, among other things, an 11-month old order involving violations of securities rules and regulations).

FINRA based its decision to bar Springsteen-Abbott on findings that she engaged in serious, securities-related misconduct. 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. *See Springsteen-Abbott*, 2017 FINRA Discip. LEXIS 23, at *3. Exploiting her position as chief executive officer of CIGF, Springsteen-Abbott improperly expensed to the Commonwealth Funds numerous personal expenses, including 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. *See id.* at *12-39. The NAC found also that Springsteen-Abbott improperly allocated to the Commonwealth Funds broker-dealer and control person expenses that were not permitted by the funds' governing documents. *See id.* at *39-43. The NAC therefore concluded that 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.[16] *See id.* at *44-49.

In justifying the bar it imposed on Springsteen-Abbott, the NAC noted, "[m]isappropriation or misuse of customer funds constitutes a serious violation of the securities laws, involving a betrayal of the most basic and fundamental trust owed to a customer." *See id.* at *67 (quoting *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *33-34 (Jan. 9, 2015), *aff'd*, 641 F. App'x 27 (2d Cir. 2016)). 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. *See id.* at *72.

Under these circumstances, we conclude that the Firm has failed to demonstrate that it is in the public interest for FINRA to permit Springsteen-Abbott's continued association with it. *See Taddonio*, SD-2117, slip op. at 26 ("We find that, under the circumstances, Taddonio has failed to demonstrate that he can fully comply with securities laws and regulations."); *Ass'n of X*, Redacted Decision No. SD11003, slip op. at 6 ("We find that the Sponsoring Firm has not made the strong showing necessary for our approval of its Application for X [a person who engaged in serious misconduct and on whom FINRA imposed an unqualified bar] to re-enter the securities industry and associate with a FINRA member firm."). We also find that far too little time has passed since FINRA imposed a bar on Springsteen-Abbott and for the Firm to demonstrate credibly that she is currently able to comply with the federal securities laws and refrain from engaging in other misconduct. *See Escobio,* SD-2130, slip op. at 17; *see also Ass'n of X*, Redacted Decision No. SD11003, slip op. at 7 ("[T]he AWC is recent."). Springsteen-Abbott's appeal of the NAC's July 20, 2017 remand decision does not abate the soundness of this conclusion. *See Escobio*, SD-2130, slip op. at 17 ("Escobio's appeal of the Judgment does not alter our conclusion that it involved highly serious misconduct and that the Judgment supports denial of the application.").

During the February 21, 2017 hearing, Springsteen-Abbott, and the other witnesses who testified in support of the Application, attempted to downplay the seriousness of her misconduct by recasting it as having resulted from mere accounting errors and other process deficiencies that have been corrected. We reject this attempt to soften the seriousness of Springsteen-Abbott's misconduct. *See Taddonio*, SD-2117, slip op. at 25-26. Springsteen-Abbott cannot collaterally attack FINRA's decision to bar her, and our determination to reject the Application is independent of the Firm's assessment of her misconduct. *See Ass'n of X*, Redacted Decision SD11003, slip op. at 7 (citing *Joseph Frymer*, 49 S.E.C. 1181, 1182 (1989)).

As the NAC found, Springsteen-Abbott engaged in a purposeful pattern and practice of improperly allocating expenses. *See Springsteen-Abbott*, 2017 FINRA Discip. LEXIS 23, at *45, 68-69. 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

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[16] The disciplinary hearing panel that considered the testimony of both Springsteen-Abbott and Abbott, and their attempts to justify the expenses improperly charged to the Commonwealth Funds, found that they lacked credibility. *See, e.g., Springsteen-Abbott*, 2017 FINRA Discip. LEXIS 23, at *14, 25.

detection and she attempted to conceal her misconduct with false justifications and documentation. *See id.* at *68-69. Such deceitful behavior supports our conclusion that her continued participation in the securities industry is not in the public interest at this time. *See Kufrovich*, 55 S.E.C. at 627 ("A propensity for dishonest behavior is of particular concern in the securities industry, an industry that presents numerous opportunities for abuses of trust.").

C. The Firm Has not Demonstrated that It Can Stringently Supervise Springsteen-Abbott

The Firm has the burden of demonstrating that it is capable of providing stringent supervision for a statutorily disqualified individual such as Springsteen-Abbott. *See Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *17-18 (July 17, 2009) (holding that an applicant must establish that it will be able to stringently supervise a statutorily disqualified individual). It has failed to satisfy this burden in myriad ways.

First, the Firm has not demonstrated that Abbott has the independence necessary to supervise Springsteen-Abbott. At a minimum, their spousal relationship creates the potential that Abbott will not apply stringent heightened supervision. *See Escobio*, SD-2130, slip op. at 14. Moreover, as we have previously held, "stringent supervision free of any conflicts of interest between the supervised [disqualified] individual and his supervisor (and, in turn, firm management) is of the utmost importance." *See In the Matter of the Continued Ass'n of Ronald Berman with Axiom Capital Mgmt., Inc.*, SD-1997, slip op. at 17-18 (FINRA NAC Dec. 11, 2014), http://www.finra.org/sites/default/files/Berman%20SD-1997%20FINAL%2019%28d%29%20DECISION%2012%2011%2014_0_0_0_0_0_0_0_0.pdf. In this respect, the relationship between Abbott and Springsteen-Abbott is fraught with other potential conflicts of interests. These two individuals have a close working relationship, and they have worked side-by-side running the family of Commonwealth entities for greater than 20 years. Springsteen-Abbott and Abbott currently are the sole members of the executive committee of the CCC board of directors, and as such exercise great authority over the management of the company and its subsidiaries.

Second, "it is especially difficult for employees to supervise effectively the activities of the owner of a firm." *Asensio & Co.*, Exchange Act Release No. 68505, 2012 SEC LEXIS 3954, at *28 (Dec. 12, 2012). Springsteen-Abbott wields considerable power as the sole owner of CCC, and thus as the sole indirect owner of the Firm. Because all employees of the Firm, including Abbott and other members of her family, are also employees of CCC, she retains the power to fire them. She also is responsible for paying their salaries through the agreement by which the Firm expenses its costs to CCC. Finally, the Firm is dependent on Springsteen-Abbott for periodic capital contributions to continue its operations. These factors weigh against approving the application. *See Jaffe*, SD-2103, slip op. at 20 ("This arrangement presents, at a minimum, the potential for conflicts."); *see also Meyers*, SD-2069, slip op. at 33 ("Meyers's extensive history of ignoring regulatory requirements makes us skeptical that any supervisor could ensure Meyers's compliance with the heightened supervisory terms, especially provisions designed to minimize his ability to exert control over the Firm that he founded and owns.").[17]

[17] As our decision in *Meyers* makes clear, the proposed continued association of Springsteen-Abbott, which the Firm claims is necessary to ensure the Firm's funding, does not present an extraordinary circumstance that compels us to approve the Application.

Springsteen-Abbott has been at the epicenter of the Commonwealth entities for more than two decades, and she continues to hold various position of control, including over the Firm. As Springsteen-Abbott and the Firm'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. 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 Firm has not proposed any measures to cope with this vulnerability in its Application, such as an independent review of Abbott's supervision of Springsteen-Abbott or compliance with the proposed plan of heightened supervision. *See Mathis*, SD-1960, slip op. at 10 (approving an application for the association of the firm's chief executive, president, and indirect owner, where the plan of supervision provided for an independent consultant to verify the proposed supervisor's independence and to ensure compliance with the plan).

Third, we find that the Firm's proposed supervisory plan is inadequate. The plan fails to reflect the gravity of Springsteen-Abbott's misconduct and the nature of her unqualified bar from the securities industry. It consists mainly of boilerplate language and other generic provisions and contains a number of provisions that are inapplicable to the Firm's business.[18] In this respect, a large number of provisions are not unique to Springsteen-Abbott, but are applicable to all of the Firm's associated persons. *See Arouh*, 2010 SEC LEXIS 2977, at *38 (finding proposed supervisory plan deficient where "[m]uch of what the plan required is no different from the supervision the Firm afforded to all employees").

Finally, we find that the Non-Participation Agreement, which is the centerpiece of the Firm's Application, and on which the proposed plan of supervision is premised, provides no justification to conclude that approving the Application is in the public interest. It does not sever effectively, as the Firm contends, Springsteen-Abbott's control over the Firm. As Springsteen-Abbott conceded during cross-examination, she retains the authority, as the Firm'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. Indeed, she admitted, nothing prevents her from undoing later the restrictions that the Non-Participation Agreement purports to impose on her.

In many respects, the Non-Participation Agreement is aspirational only. The Firm has not proposed any formal procedures to establish that Springsteen-Abbott is abiding by its terms and that Abbott, her proposed supervisor, is taking steps to ensure her compliance. *See id.* at *39 (upholding denial of an individual and finding the firm's plan of supervision lacked detail because, among other things, it failed to explain how the supervisor would conduct his review). Abbott testified that the Firm would implement such procedures upon the Application's approval. We are required, however, to consider the proposed supervisory plan before us, not some hypothetical plan. *See 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 that FINRA was fully justified in requiring the firm to provide

[18] For example, the plan provides that Springsteen-Abbott be prohibited from opening accounts, including discretionary accounts, or writing order tickets, activities that the Firm does not permit in the first place.

specifics concerning that plan before approving an application); *Emerson*, 2009 SEC LEXIS 2417, at *20 (rejecting argument that the applicants were willing to accept a supervisory agreement that would satisfy FINRA; "[d]rafting a supervisory plan . . . is neither the Commission's nor FINRA's role").

We are left therefore to consider the stated intentions of Springsteen-Abbott and Abbott, and their verbal "commitment" to abide by the Non-Participation Agreement's terms. The Hearing Panel that heard the testimony of Springsteen-Abbott and Abbott in this membership continuance proceeding found that their testimony lacked credibility. Given these circumstances, we are unwilling at this time to make the leap of faith that the Firm asks of us by requesting that we approve the Application for Springsteen-Abbott's "limited association" with the Firm.

For all of these reasons, we find that the Firm has failed to demonstrate that it can stringently supervise Springsteen-Abbott as a statutorily disqualified individual.

VIII. Conclusion

Accordingly, we find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Springsteen-Abbott to continue to associate with the Firm. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary