

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Membership  
of

Windsor Street Capital, L.P. (f/k/a Meyers  
Associates, L.P.)

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

SD-2172

May 14, 2018

**I. Introduction**

On September 7, 2017, Windsor Street Capital, L.P. (f/k/a Meyers Associates, L.P.) (the “Firm”) filed a Membership Continuance Application (“MC-400A” or “the Application”) with FINRA’s Department of Registration and Disclosure (“RAD”). The Application requests that FINRA permit the Firm to continue its membership in FINRA notwithstanding its statutory disqualification. On February 28, 2018, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter. The Firm’s acting chief executive officer, acting president, and chief operations officer (Alfredo Stalin Cruz (“Cruz”)), chief compliance officer (John Stalanski (“Stalanski”)), and the Firm’s co-owner and executive vice president (Imtiaz Khan (“Khan”)) appeared at the hearing, accompanied by the Firm’s counsel (Robert I. Rabinowitz, Esq.). Lorraine Lee, Ann-Marie Mason, Esq., and Meredith MacVicar, Esq. appeared on behalf of FINRA’s Department of Member Regulation (“Member Regulation”).

After a careful review of the record, we find that the Firm has not met its burden of demonstrating that its continued membership in FINRA is in the public interest. Specifically, we find that the Firm: (1) has failed to comply with the terms of its disqualifying order; (2) failed to propose a meaningful plan to help ensure that it does not engage in misconduct going forward; (3) proposed inadequate principals and supervisors to oversee the Firm’s future compliance with securities rules and regulations; and (4) has not demonstrated that it is able to comply with securities rules and regulations going forward. The Firm’s continued participation in the securities industry presents an unreasonable risk of harm to the market and investors, and we therefore deny the Firm’s Application.<sup>1</sup>

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<sup>1</sup> Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. The Statutory Disqualification Committee considered the Hearing Panel’s recommendation and presented a written recommendation to the National Adjudicatory Council (“NAC”).

## II. The Statutorily Disqualifying Event

The Firm is statutorily disqualified because of a July 28, 2017 Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (the “Disqualifying Order”) entered against it by the SEC. The Disqualifying Order found that from at least June 2013 to January 2016, the Firm willfully violated Sections 5(a) and 5(c) of the Securities Act of 1933 (the “Securities Act”) by facilitating the unregistered sale of hundreds of millions of shares of penny stock, without performing adequate due diligence. The Disqualifying Order also found that the Firm willfully violated Section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Exchange Act Rule 17a-8 by failing to file suspicious activity reports with the Financial Crimes Enforcement Network, as required by the Bank Secrecy Act of 1970.<sup>2</sup> The Disqualifying Order found that notwithstanding the presence of multiple red flags related to the Firm’s penny stock business, and despite notifications from the Firm’s clearing firm of certain red flags, the Firm failed to reasonably investigate whether suspicious activity reports were necessary.<sup>3</sup> The Disqualifying Order further found that the Firm failed to follow its AML procedures, which listed red flags that the Firm should have acted upon.

The Disqualifying Order required that the Firm cease and desist from committing or causing any violations and future violations of applicable securities laws and censured the Firm. The Disqualifying Order further ordered that the Firm, among other things:

- Pay a \$200,000 civil penalty pursuant to the following schedule: an initial payment of \$50,000 within seven days of the Disqualifying Order’s entry and monthly payments thereafter beginning in August 2017 of \$12,500 (payable on the 28th of each month) for one year;

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<sup>2</sup> FINRA’s By-Laws provide that a firm is subject to “disqualification,” and thus must seek and obtain FINRA’s approval to continue its membership in FINRA, if it is disqualified under Exchange Act Section 3(a)(39). *See* FINRA By-Laws, Article III. Exchange Act Section 3(a)(39) incorporates by reference, among other provisions, Exchange Act Section 15(b)(4)(D). Exchange Act Section 15(b)(4)(D) provides that a firm is subject to statutory disqualification if it has willfully violated any provision of, among other things, the Securities Act or the Exchange Act.

<sup>3</sup> The SEC entered a similar order against the Firm’s former chief executive officer, chief compliance officer, and Anti-Money Laundering (“AML”) compliance officer (John Telfer (“Telfer”). That order, among other things, barred Telfer. He is no longer associated with the Firm. *See infra* Part III.B.

- Refrain from accepting customer deposits of low-priced securities;
- Certify in writing by August 4, 2017, that it complied with the prohibition from accepting low-priced securities, and file certifications to this effect every year for 10 years;
- Retain, by August 27, 2017, an independent consultant not unacceptable to the SEC to review and recommend mandatory enhancements to the Firm's AML policies for a period of two years. The consultant is thereafter required to provide to the SEC semi-annual assessments, and the Firm is required to remediate any deficiencies noted by the consultant; and
- Certify in writing that the Firm has complied with all of the undertakings set forth in the Disqualifying Order within 60 days from the date of completion.

As discussed below, the Firm has failed in myriad ways to comply with the terms of the Disqualifying Order. *See infra* Part V.A.

### III. The Firm

#### A. Background

The Firm has been a FINRA member since June 1994 and is based in New York City. The Application states that the Firm has two branch offices and two Offices of Supervisory Jurisdiction and that it employs six registered principals and 51 registered representatives. Member Regulation asserts that as of February 2018, the Firm employed eight registered principals, 38 registered representatives, and five non-registered individuals.<sup>4</sup> Similarly, the Firm asserts that since June 2016, it has reduced the number of registered representatives by approximately 50%. The Firm represents it has reduced headcount because it has “terminat[ed] representatives with questionable business practices.” Notwithstanding this assertion, the record shows that of the 38 registered representatives remaining at the Firm, 28 of them (approximately 74%) have at least one disclosure on their Uniform Applications for Securities Industry Registration or Transfer (“Form U4”). Twenty two of these 28 registered representatives (representing almost 58% of the Firm's registered representatives) have three or more disclosures on their Forms U4.

Bruce Meyers founded and ran the Firm from its inception until 2016. On May 9, 2016, the NAC denied a Membership Continuance Application filed by the Firm seeking to permit Bruce Meyers to continue to work at and run the Firm, notwithstanding his statutory

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<sup>4</sup> Notwithstanding the Firm's inaccurate statement in the Application that no statutorily disqualified individuals are currently associated with it, the Firm currently employs two individuals subject to statutory disqualification (although neither individual was required to go through a FINRA eligibility proceeding because their disqualifying orders did not revoke or suspend their registrations and the sanctions imposed by the orders are no longer in effect). *See FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 68, at \*11-12 (Apr. 2009) (providing that for statutory disqualifications involving orders such as these, a Membership Continuance Application is not required).

disqualification. See *In the Matter of the Continued Ass'n of Bruce Meyers with Meyers Assocs., L.P.*, SD 2069, slip op. (FINRA NAC May 9, 2016), [http://www.finra.org/sites/default/files/SD-2069-Meyers\\_0.pdf](http://www.finra.org/sites/default/files/SD-2069-Meyers_0.pdf) (“May 2016 NAC Decision”). The NAC denied the Firm’s application based upon the Firm’s and Bruce Meyers’s extensive regulatory and disciplinary histories and serious concerns with Bruce Meyers’s proposed supervision. In connection with its denial of the Firm’s application, the NAC considered that the Firm had hired an independent consultant in 2015 to address the Firm’s compliance deficiencies, but noted that a number of the consultant’s more significant recommendations had not been implemented (including placing restrictions upon Meyers imposed by his disqualifying order). The SEC affirmed the May 2016 NAC Decision in September 2017.<sup>5</sup> See *In the Matter of the Application of Meyers Associates, L.P. and Bruce Meyers*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096 (Sept. 29, 2017).

B. The Firm’s Initial Management Subsequent to Bruce Meyers

At the hearing, the Firm’s counsel described the approximately two-year period subsequent to Bruce Meyers’s departure as “difficult and chaotic.” After the Firm filed a Uniform Application for Securities Industry Termination for Bruce Meyers in June 2016, the Firm elevated Telfer to serve as the Firm’s chief executive officer and chief compliance officer. The Firm promoted Telfer despite numerous marks on his record. Indeed, at the time the Firm promoted Telfer, FINRA’s Central Registration Depository (“CRD”®) reflected that he had: (1) entered into two Letters of Acceptance, Waiver and Consent with FINRA for violations of FINRA’s supervision rules and for failing to develop appropriate privacy policies; (2) nine customer complaints filed against him; and (3) a then-pending FINRA Wells Notice for failures to disclose a tax lien and bankruptcy filing. The Firm terminated Telfer in September 2016, and as set forth above, the SEC barred him in June 2017.

After Telfer’s departure, the Firm did not officially hire a new chief executive officer. It did, however, elevate Francine Lanaia (“Lanaia”) to chief compliance officer. Lanaia also appears to have served as the de facto head of the Firm. At the time the Firm promoted Lanaia, CRD showed that she had been the subject of two disciplinary actions (for, among other things, supervisory violations) and one pending action for failing to supervise. Lanaia resigned from the Firm in mid-November 2017, and at the time of the hearing in this matter she was serving a three-month FINRA suspension for willfully failing to disclose three outstanding civil judgments against her totaling more than \$286,000.

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<sup>5</sup> In March 2017, the NAC denied another Membership Continuance Application filed by the Firm, which sought to continue to employ another registered representative notwithstanding his statutory disqualification. See *In the Matter of the Continued Association of Craig Taddonio*, SD 2117, slip op. (FINRA NAC Mar. 8, 2017), [http://www.finra.org/sites/default/files/NAC\\_SD-2117\\_Taddonio-Meyers-Associates\\_030817.pdf](http://www.finra.org/sites/default/files/NAC_SD-2117_Taddonio-Meyers-Associates_030817.pdf). In that matter, the NAC found that, among other things, the Firm was not capable of supervising a disqualified individual and noted that it had “no confidence that the Firm’s compliance with securities laws and regulations will improve in the near future.” *Id.* at 24.

C. The Firm's Current Management

1. *Chief Operations Officer and Acting Chief Executive Officer/President*

In June 2017, Lanaia hired her former colleague, Cruz, as the Firm's chief operations officer and managing director. At the hearing, Cruz also described himself as the Firm's current acting chief executive officer and president "by default."<sup>6</sup> He is also a member of the Firm's board of directors, part of its management team, and a member of the Firm's new hiring committee, new product committee, and new business committee.

Cruz first registered as a general securities representative in July 1994. He also registered as an equity trader in February 1999, as a general securities principal in January 2000, as a registered options principal in June 2000, and as a municipal securities principal in May 2001. Cruz also passed the uniform securities agent state law examination in June 1994. Prior to joining the Firm, Cruz was associated with seven member firms. Cruz testified that he has some previous supervisory and management experience, although he has never previously served in an officer-level position. CRD lists four outstanding liens against Cruz totaling approximately \$50,000. Cruz testified that these liens all relate to unpaid taxes that he had not received notice of, and that he is currently in the process of resolving these matters. Cruz also testified that he believes that there is one other undisclosed judgment or lien in the amount of \$3,000 "that's also going to be part of the process."

At the hearing, Cruz testified that his role at the Firm is to "guide the company with [the Firm's] regulators" and to work with the management team in a number of areas. He also serves as the direct supervisor for six registered individuals, although he did not appear to know the physical location of one of his direct reports.<sup>7</sup> Cruz further testified that, among other things, he is currently working on placing one of his six direct reports on heightened supervision based upon that individual's receipt of a FINRA Wells Notice for potential violations of Exchange Act Section 10(b), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010.<sup>8</sup> Cruz testified that he is responsible for hiring and firing at the Firm, and that since he joined the Firm, he has fired

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<sup>6</sup> The Firm's Uniform Application for Broker-Dealer Registration ("Form BD"), however, does not list Cruz as the Firm's acting chief executive officer or president.

<sup>7</sup> Cruz also initially denied that one of the individuals under his direct supervision is statutorily disqualified, but later conceded that he is disqualified. Cruz testified that this individual is not currently under heightened supervision (despite CRD listing, in addition to his disqualifying order from a state regulator, two settlements with FINRA resulting in fines and suspensions, three customer complaints resulting in payments to customers totaling \$653,000, and a termination from a prior firm for violating firm policies concerning handling customer accounts).

<sup>8</sup> Cruz testified that he learned of the Wells Notice (dated November 14, 2016) in late January 2018. Cruz did not explain why he discovered the existence of the Wells Notice more than seven months after he started at the Firm. Nor did he explain his continuing delay in placing this individual under heightened supervision (other than stating that "[w]e have a lot of pressing things"), although he agreed that doing so should be a priority.

six individuals. Cruz later testified, however, that he soon plans to review “every single employee” at the Firm.<sup>9</sup> He further testified that the Firm is currently making improvements to its supervisory systems and “looking at all areas.”<sup>10</sup> He described the current status of the Firm as a “fixer upper” and “transitioning.”

Cruz testified that he learned of the Disqualifying Order in late October 2017 (i.e., approximately three months after the SEC entered it but several months after Cruz started). He testified that compliance with certain aspects of the Disqualifying Order is his responsibility, and when he learned that the Firm had not been timely paying the penalty imposed by the Disqualifying Order he directed that it be paid sometime after mid-December 2017. Cruz testified that the independent consultant required by the Disqualifying Order had been retained, although he did not know the status of any work performed. He further testified that although the Firm does not conduct any business in penny stocks and no longer accepts low-priced securities, he understands that the Firm’s certification that it is not accepting from customers low-priced securities (required to be filed with the SEC on or before August 4, 2017) remains an “open item” that the Firm is “working on.”

## 2. Chief Compliance Officer

In December 2017, the Firm hired Stalanski as its chief compliance officer.<sup>11</sup> Stalanski is also part of the Firm’s management team, new hiring committee, new product committee, and new business committee. Prior to joining the Firm, Stalanski had been out of the industry for approximately 3.5 years. He first registered as a general securities representative in September 1997 and as a general securities principal in July 2000 (and obtained waivers to become re-registered in such capacities in January 2018). Stalanski has been associated with eight other firms, and testified that he has previously served as the chief compliance officer for three firms (for a total period of approximately four years).

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<sup>9</sup> It is unclear why Cruz would need to review the Firm’s employees if he has already fired six individuals as he claims (and presumably reviewed the Firm’s employees at that time) and if the Firm has terminated numerous individuals with “questionable business practices” since June 2016, as it asserts. Cruz’s plan to review “every single employee” also appears to contradict his testimony that “from 2017 going forward, this is a whole new entity. There’s a few people that are legacy people there, but so far there’s no reason to get rid of them.” The record shows that the only individual hired since Cruz began at the Firm is Stalanski.

<sup>10</sup> Specifically, Cruz testified that the number of payment extension requests filed under Regulation T have decreased since he joined the Firm and that the Firm has enacted more stringent account opening procedures (which he claimed resulted in the Firm opening substantially fewer customer accounts). When pressed, however, Cruz conceded that the decrease in Firm headcount contributed significantly to the decrease in new account openings. Further, Cruz testified that despite the Firm’s significant decrease in headcount, the Firm still had 70 extensions under Regulation T in 2017.

<sup>11</sup> Cruz testified that he briefly served as the Firm’s chief compliance officer after Lanaia left the Firm but before it hired Stalanski.

Stalanski testified that since joining the Firm, his main focus has been to respond to outstanding requests for information from regulators.<sup>12</sup> He has also been focused on revising the Firm's written supervisory procedures ("WSPs") and developing new suitability standards for elderly customers. Stalanski stated that he has also rewritten the Firm's AML procedures, although he described them as a "work in progress" and they are not yet specifically tailored to the Firm's business.<sup>13</sup> Stalanski also testified that one of the Firm's registered representatives, who is the subject of an August 2017 FINRA complaint alleging that he excessively traded the account of an elderly couple, had not yet been placed on heightened supervision but that Stalanski was in the process of doing so.<sup>14</sup> He further testified that he is attempting to gather additional information in connection with Wells Notices that FINRA sent to three other associated persons at the Firm (who are not currently under heightened supervision) in late 2016 to determine what action to take against them. As a general matter, Stalanski testified that he believes that only one or two individuals at the Firm are currently on heightened supervision, although he could not recall their identities. Stalanski also testified that he currently supervises Khan's investment banking activities although he is not currently registered as an investment banking representative (Series 79).<sup>15</sup>

Stalanski further testified that it is his responsibility to ensure that the Firm pays the penalty under the Disqualifying Order, but admitted that the Firm is not current. Despite bearing responsibility for this matter, Stalanski did not know when monthly payments are due under the Disqualifying Order or the amount due each month. He also did not know that an independent consultant had not been hired as required by the Disqualifying Order, and testified that he has never talked to any consultant and that the Firm's AML procedures have not been reviewed by a consultant. He did not know why the Firm had not filed with the SEC the certification that was due on August 4, 2017.

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<sup>12</sup> Although the Firm asserted that the number of customer complaints filed against it has decreased since June 2016, Stalanski acknowledged that at least a portion of this decrease may be attributed to the Firm's reduction in headcount. Stalanski further acknowledged that during FINRA's 2017 examination, it discovered at least five customer complaints that the Firm failed to report.

<sup>13</sup> Khan described Stalanski as "buried" with work.

<sup>14</sup> In fact, Stalanski testified that he had only reviewed the August 2017 complaint several days before the hearing.

<sup>15</sup> Stalanski's supervision of Khan's investment banking activities without being registered as an investment banking representative is contrary to prior FINRA guidance. *See FINRA Regulatory Notice 09-41*, 2009 FINRA LEXIS 114, at \*1, 6-7 (providing that principals who supervise investment banking activities are required to be registered as investment banking representatives). Indeed, the Firm previously espoused, erroneously and in connection with Bruce Meyers's statutory disqualification application, that such registration was not required to supervise investment banking activities. *See* May 2016 NAC Decision, slip op. at 33 n.30.

### 3. *Imtiaz Khan*

Khan is currently an owner of the Firm and an executive vice president, and has been associated with the Firm since 1999.<sup>16</sup> Khan testified that he primarily conducts the Firm's investment banking business.<sup>17</sup> He further testified that other than two or three individuals highlighted by Member Regulation, "none of the [Firm's] brokers have any issue[s]" and "there's good people" at the Firm. Khan elaborated that "[i]n our firm not a single broker had an enforcement issue besides that Greg person, not a single guy [has] regulatory matters. Not a single person [has] a complaint at the level that there's a fraud been done." Khan asserted that the Firm has been a "victim" of firms that solicit arbitration claimants. Khan, however, also testified that the Firm has "parted ways with people who, we feel would not fit in the compliance culture." Khan stated that given the Firm's history, he cannot find "quality" employees.

Despite evidence in the record to the contrary, Khan asserted that the Firm was current on its payments to the SEC under the Disqualifying Order. He testified that the Firm had in fact retained a consultant to perform services in accordance with the Disqualifying Order, but he asserts that the consultant later increased its prices and that the Firm and that consultant could not agree upon engagement terms. Khan stated that the Firm has had discussions with three other consultants to perform the work, but has not yet identified the names of these parties to the SEC for its evaluation. Khan further asserted that under the Disqualifying Order, the consultant could not begin its work until the end of 2017. With respect to the Firm's failure to file a certification that it no longer accepted low-priced securities, at the hearing Khan blamed the Firm's clearing firm for the delay and asserted that the Firm could not make such certification absent certain unspecified reports from its clearing firm. Khan asserted that although he asked the clearing firm to provide him with the reports so that the Firm could make its required certification, the clearing firm took five months to do so and only recently produced the reports.<sup>18</sup>

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<sup>16</sup> In discussing Bruce Meyers's management of the Firm prior to his departure in 2016, Khan testified that Bruce Meyers was "not a manager himself" and not served well by the people he hired. Prior to Bruce Meyers's departure from the Firm, Khan testified that he "wore many hats," held what he characterized as a small ownership interest in the Firm, and served as Bruce Meyers's "adviser." The Firm informed FINRA that Meyers Securities Corp. ("MSC") directly owns 100% of the Firm, and although the timing is unclear, within several months of January 1, 2017, Bruce Meyers's ownership interests in the Firm were transferred to a blind, irrevocable trust (of which Bruce Meyers was the grantor, and Bruce Meyers and his wife are the beneficiaries). The Firm represented that the trust owns 50% of MSC and that Khan now owns 50%. At the hearing, however, Khan disputed the accuracy of these figures.

<sup>17</sup> Khan is the subject of three Wells Notices issued by FINRA on December 5, 2016, November 14, 2016, and April 25, 2016 (which involve potential violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5, FINRA Rules 2010, 2020, 3270, and 8210, and NASD Rule 1021). Khan did not disclose on his Form U4 the December 5, 2016 Wells Notice. Khan was also the subject of a FINRA disciplinary action. In April 2016, a FINRA Hearing Panel dismissed charges against him.

<sup>18</sup> Khan's testimony stands in contrast to Cruz's unqualified assertion that the Firm was not engaged in this line of business, as well as the Firm's representations that "[s]ince June 2016 the



#### 4. *Other Notable Principals at the Firm*

Member Regulation asserts that two other designated principals listed on the Firm's Form BD have troubling regulatory histories.

##### a. Neal Scott

Neal Scott ("N. Scott") is the Firm's municipal securities principal. He joined the Firm in September 2015. He first registered as a general securities representative in April 1982, as a general securities principal in November 1988, and as a municipal securities principal in September 2007. Prior to joining the Firm in September 2015, N. Scott was associated with nine other firms.

CRD shows that in November 2017, Maryland issued an order against N. Scott for failing to disclose five tax liens. Maryland, among other things, permitted N. Scott to withdraw his state registration. CRD also shows that in November 2015, Virginia denied N. Scott's pending registration request because he failed to timely submit requested items.

Moreover, CRD shows that in July 1997, two customers filed a complaint against N. Scott alleging sales of unregistered securities, misrepresentations, fraud, and unsuitable recommendations. The customers sought \$1.45 million in damages, and eventually settled this matter for \$262,000. CRD does not indicate whether N. Scott personally contributed to this settlement. Similarly, in April 1991, two customers filed a complaint against N. Scott alleging misrepresentations. The customers sought \$150,699 in damages. A FINRA arbitration panel awarded the customers \$84,100. CRD does not indicate whether N. Scott personally contributed to this settlement. Finally, CRD lists five outstanding federal tax liens against N. Scott totaling approximately \$332,000 and an unpaid civil judgment totaling \$316,000.

##### b. Anthony Pace

Anthony Pace is, among other things, the branch manager of the Firm's New York City office, a member of the Firm's board of directors, and part of the Firm's management team. Stalanski testified that Pace is responsible for all of the Firm's registered representatives in the New York City office and he is the floor supervisor.<sup>19</sup> Pace has been with the Firm since October 2015, and he has been associated with eight other firms. He first registered as a general securities representative in July 1994 and also registered as a general securities principal in June 2001.

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Firm has not permitted deposits of penny stocks . . . or solicitation [of] penny stock business. This restriction was implemented prior to the issuance of the recent SEC Order prohibiting such business."

<sup>19</sup> A Firm organizational chart shows that Pace is the direct supervisor for approximately 20 registered representatives.

Seven customers have filed complaints against Pace. Four of those complaints resulted in arbitrations where customers were awarded a total of \$261,000 (of which Pace personally contributed \$13,500).

D. The Firm's Regulatory and Disciplinary History

As set forth below, the Firm has an extensive regulatory and disciplinary history (which includes numerous supervisory violations and other areas of repeated misconduct).

1. *Pending Regulatory and Disciplinary Actions*

The Firm is subject to seven pending regulatory and disciplinary actions, including two litigated matters that resulted in \$1.2 million in fines.<sup>20</sup>

In January 2018, the NAC affirmed a FINRA Hearing Panel decision that found the Firm used misleading communications with the public, maintained inaccurate books and records, failed to supervise the preparation of its books and records, failed to supervise electronic communications, failed to report customer complaints, and did not have an adequate system of supervisory controls and procedures. *See Dep't of Enforcement v. Meyers Associates, L.P.*, Complaint No. 2010020954501, 2018 FINRA Discip. LEXIS 1 (FINRA NAC Jan. 4, 2018), *appeal docketed*, SEC Admin. Pro. No. 3-18359 (Feb. 20, 2018). The NAC further found that Bruce Meyers used misleading public communications and failed to supervise the preparation of the Firm's books and records. The NAC fined the Firm \$500,000 for its supervision-related misconduct and \$200,000 for its advertising violations. The NAC increased the fines imposed by the Hearing Panel and, with respect to the supervisory violations, found that the Firm "persistently ignored its supervisory shortcomings and chose to pay significant fines rather than strengthen its system of controls. FINRA sanctions to date have not served to deter Meyers Associates' misconduct." The NAC also fined Bruce Meyers \$100,000 and barred him from acting in any supervisory or principal capacity. The Firm has appealed the decision to the SEC.

In December 2017, the NAC affirmed a FINRA Hearing Panel decision that found the Firm failed to supervise its Chicago office and failed to establish and implement adequate AML policies and procedures. *See Dep't of Enforcement v. Meyers Associates, L.P.*, Complaint No. 2013035533701, 2017 FINRA Discip. LEXIS 47 (FINRA NAC Dec. 22, 2017), *appeal docketed*, SEC Admin. Pro. No. 3-18350 (Jan. 23, 2018). Specifically, the NAC found that the Firm failed to take basic steps to ensure that its supervisors were adequately supervising the activities of registered personnel and ignored numerous red flags regarding a fraudulent market manipulation scheme at the Firm. The NAC found that the Firm's "troubling and egregious violations" warranted a \$500,000 fine upon the Firm (an increase from the Hearing Panel's fine). It also ordered that the Firm retain an independent consultant within 60 days. Finally, the NAC found that the Firm was statutorily disqualified as a result of its misconduct. The Firm has appealed the decision to the SEC.

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<sup>20</sup> Although we are troubled by the pending matters against the Firm and the serious allegations against it, we have not counted them against the Firm in denying the Application. *See also infra* Part III.D.3 (discussing pending arbitrations).

In August 2017, FINRA's Department of Enforcement ("Enforcement") filed a complaint against the Firm and two of its registered representatives (including one who is still employed at the Firm; *see supra* Part III.C.2). The complaint alleges that the Firm failed to supervise the activities of these registered representatives in connection with excessive trading in an elderly couple's account and failed to have supervisory systems and procedures reasonably designed to achieve compliance with FINRA's rules. A hearing in this matter is currently scheduled for mid-May 2018.

On December 5, 2016, Enforcement issued a Wells Notice to the Firm, which notified it that Enforcement had made a preliminary determination to file disciplinary charges against it for: (1) violating Exchange Act Section 17, Exchange Act Rules 17a-3 and 17a-4, and FINRA Rules 4511 and 7450; (2) violating NASD Rule 3010(c) and FINRA Rule 2010; and (3) violating NASD Rule 3010(d)(2) and FINRA Rule 2010.<sup>21</sup>

On November 14, 2016, Enforcement issued a Wells Notice to the Firm, which notified it that Enforcement had made a preliminary determination to file disciplinary charges against it for: (1) willfully violating Exchange Act Section 10(b) and Exchange Act Rule 10b-5; (2) willfully violating Exchange Act Section 17(a) and Exchange Act Rules 17a-3 and 17a-4; (3) violating Section 220.8 of Regulation T; and (4) violating FINRA Rules 2010, 2020, 2121, 3110, 3310, 4511, 4530, 5310, and 8210, NASD Rules 1021, 1031, 2440, and 3010, and IM-1000-3 and IM-2440.<sup>22</sup>

On April 25, 2016, Enforcement issued a Wells Notice to the Firm, which notified it that Enforcement had made a preliminary determination to file disciplinary charges against it for violating FINRA Rules 8210 and 2010 by making false and misleading statements in response to a request for information regarding payments made to the Firm.

In December 2015, Enforcement issued a Wells Notice to Bruce Meyers and the Firm, which notified them that Enforcement had made a preliminary determination to file disciplinary charges against them for violating: (1) Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 for willfully failing to disclose on Bruce Meyers's Form U4 a pending customer arbitration filed in July 2014 and the resulting settlement; (2) NASD Rules 3010 and 3012 and FINRA Rule 2010 for numerous supervisory failures; (3) FINRA Rules 4530 and 2010 for failing to disclose for several years, and failing to timely disclose, written customer complaints; (4) NASD Rule 2440 and FINRA Rule 2010 for charging excessive commissions; and (5) Exchange Act Rule 17a-4 and FINRA Rule 2010 for failing to retain email correspondence.

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<sup>21</sup> On this same date, Enforcement issued a Wells Notice to Bruce Meyers, whereby it informed him that it had made a preliminary determination to file disciplinary charges against him for much of the same alleged misconduct.

<sup>22</sup> Enforcement also issued a Wells Notice to Bruce Meyers in connection with this alleged misconduct.

## 2. Final Regulatory and Disciplinary History

Other than the Disqualifying Order, the Firm has been the subject of at least 19 final regulatory and disciplinary actions since 2000, and to date has paid approximately \$436,000 in monetary sanctions to settle certain of these matters. This total does not include the \$1.2 million in FINRA fines assessed but not yet paid for the matters under appeal, or any portion of the \$200,000 penalty imposed upon the Firm by the Disqualifying Order. *See supra* Part II.

In May 2017, Connecticut's Department of Banking entered a Consent Order against the Firm (the "2017 Connecticut Order"). The 2017 Connecticut Order resulted from the Department of Banking's examination of the Firm pursuant to a Consent Order entered against the Firm and Bruce Meyers by the Department of Banking on March 24, 2015 (the "2015 Connecticut Order"). The 2017 Connecticut Order found that the Firm: (1) failed to provide copies of, and make required books and records available to, the Department of Banking; (2) failed to maintain true, accurate, and current books and records; (3) failed to establish, enforce, and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations; (4) offered and sold unregistered securities to at least one Connecticut investor; and (5) violated cease and desist provisions of the 2015 Connecticut Order and a 2011 order entered by the Department of Banking against the Firm. Pursuant to the 2017 Connecticut Order, the Firm agreed to withdraw its broker-dealer registration in Connecticut and to pay a \$25,000 fine.

In November 2016, the Firm filed a Uniform Request for Withdrawal from Broker-Dealer Registration for the Firm's Vermont broker-dealer registration. The Firm withdrew its Vermont registration in response to notification by the Vermont Department of Financial Regulation that it would seek to revoke, based upon the Firm's numerous disciplinary matters, the Firm's broker-dealer registration in Vermont (or in the alternative it would permit the Firm to voluntarily withdraw its broker-dealer registration and cease conducting business in the state).

In June 2016, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Firm for violations of FINRA Rules 2010 and 7450 and NASD Rule 3010. Without admitting or denying the allegations, the Firm consented to findings that it failed to submit reportable order events to the Order Audit Trail System ("OATS") and failed to have in place a supervisory system reasonably designed to achieve compliance with rules regarding OATS reporting. FINRA censured the Firm and fined it \$15,000.

In December 2015, the Firm and one of its registered representatives entered into a Consent Agreement and Final Order with the Montana Commissioner of Securities. The Firm admitted that it failed to supervise the registered representative's excessive trading in three Montana residents' accounts. The Firm and the registered representative were each fined \$5,000, and were held jointly and severally liable for \$28,532 in restitution.

On March 24, 2015, Connecticut's Department of Banking entered the 2015 Connecticut Order against Bruce Meyers and the Firm.<sup>23</sup> The 2015 Connecticut Order, among other things:

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<sup>23</sup> The 2015 Connecticut Order resolved allegations that the Firm and Bruce Meyers, among other things, failed to take any meaningful disciplinary action against a registered representative on heightened supervision who continued to be the subject of numerous customer complaints,

(1) ordered Bruce Meyers to withdraw his registration as a broker-dealer agent of the Firm and not to reapply for reinstatement for three years; (2) suspended for 60 days the Firm's registration as a broker-dealer in Connecticut; (3) ordered that the Firm retain an outside consultant to conduct an audit of the Firm and file a report with the Department of Banking; (4) fined Bruce Meyers and the Firm \$50,000 and ordered that the Firm pay the cost of any examinations by the Department of Banking within 18 months of the order's entry; and (5) limited for three years the Firm's securities business in Connecticut.

In March 2013, FINRA accepted an AWC from the Firm for violations of MSRB Rules G-8 and G-14. Without admitting or denying the allegations, the Firm consented to findings that it failed to report and correctly report municipal securities transactions. FINRA censured the Firm and fined it \$6,500.

In December 2011, FINRA accepted an Offer of Settlement from the Firm for violations of NASD Rules 4632, 3010, and 2110. Without admitting or denying the allegations, the Firm consented to findings that it failed to timely and correctly report transactions to the FINRA/NASDAQ Trade Reporting Facility and OATS, and failed to establish, maintain, and enforce WSPs to ensure compliance with trade reporting rules. FINRA censured the Firm and fined it \$25,000.

In October 2011, Bruce Meyers and the Firm entered into an Offer of Settlement with FINRA to resolve an appeal of a Hearing Panel decision rendered against them. The Hearing Panel found that the Firm failed to respond and did not respond timely to requests for information, in violation of FINRA Rules 8210 and 2010, and Bruce Meyers failed to supervise Firm personnel to ensure that they completely and timely responded to requests for information, in violation of NASD Rule 3010 and FINRA Rule 2010. Pursuant to the Offer of Settlement, FINRA censured Bruce Meyers and the Firm, fined them \$35,000 (jointly and severally), and suspended Bruce Meyers from acting in any principal or supervisory capacity for four months.

In June 2011, the Firm entered into a consent order with the Connecticut Department of Banking. Without admitting or denying the allegations of the Department of Banking, the Firm consented to findings that it employed at least five unregistered agents, effected sales of unregistered securities, failed to disclose to customers that a "handling fee" it charged them included a profit to the Firm that was not based on the costs of handling the transactions, and failed to enforce its WSPs. The Department of Banking fined the Firm \$12,500, ordered that it reimburse customers and pay for the cost of future examinations, and required that it retain an independent consultant to review the Firm's operations.

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failed to reasonably supervise the enforcement of the Firm's WSPs in connection with, among other things, a suspended registered representative's contact with a Connecticut customer, failed to reasonably supervise the sales of leveraged exchange-traded funds (which resulted in unsuitable recommendations), and Bruce Meyers materially assisted, and willfully aided and abetted, the Firm's failure to provide documents requested by the Department of Banking in a complete and timely manner.

In April 2011, a FINRA Hearing Panel found that the Firm violated FINRA Rules 8210 and 2010 by failing to respond to two FINRA requests for information and documents related to a customer complaint. The Hearing Panel fined the Firm \$50,000 and ordered that it pay hearing costs.

In December 2010, Missouri entered a cease and desist order against the Firm for employing a registered representative for transacting business in Missouri without being registered and making untrue statements or omitting to state material facts in connection with the offer or sale of a security. The Firm paid a \$1,000 fine in connection with this matter.<sup>24</sup>

In November 2008, FINRA accepted an AWC from the Firm for violations of Exchange Act Section 17, Exchange Act Rule 17a-4, and NASD Rules 3110, 3010, and 2110. Without admitting or denying the allegations, the Firm consented to findings that it failed to establish and maintain a system to retain emails for more than 30 days and a record of the supervisory review of Firm emails. FINRA censured the Firm and fined it \$60,000.

In March 2007, FINRA accepted an AWC from the Firm for violations of MSRB Rules G-2, G-3, and G-27. Without admitting or denying the allegations, the Firm consented to findings that it failed to have a municipal securities principal registered at the Firm when it executed municipal securities transactions. FINRA censured the Firm and fined it \$10,000.

In September 2005, FINRA accepted an Offer of Settlement from the Firm for violations of NASD Rule 2110 and IM-10100. Without admitting or denying the allegations, the Firm consented to findings that it failed to comply with its discovery obligations and orders issued by a FINRA arbitration panel by failing to timely produce documents. FINRA censured the Firm and fined it \$25,000. FINRA also ordered the Firm to revise its WSPs to require it to notify all counsel representing the Firm in arbitration proceedings of the Firm's policy to comply with arbitration discovery requirements and to comply with all orders of arbitration panels relating to discovery obligations.

In July 2004, FINRA accepted an AWC from the Firm for violations of NASD Rules 3070 and 2110. Without admitting or denying the allegations, the Firm consented to findings that it conducted a securities business while under suspension for failing to pay arbitration fees, failed to report and timely report customer complaints, and failed to timely report two arbitration settlements. FINRA censured the Firm and fined it \$12,500.

In May 2004, the Firm entered into a stipulation and consent agreement with the State of Florida to settle allegations that it failed to properly register a branch office. Florida fined the Firm \$15,000.

In May 2003, the State of Iowa fined the Firm \$500 for failing to timely file audited financial statements.

In December 2002, FINRA accepted an AWC from the Firm for violations of Exchange Act Rule 15c1-5 and NASD Rules 2240, 3010, and 2110. Without admitting or denying the allegations, the Firm consented to findings that it failed to disclose to customers the existence of a potential control relationship between the Firm and a public company whose securities the

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<sup>24</sup> This matter was finalized in 2016.

customers purchased. The Firm also consented to findings that it did not consistently enforce its WSPs. FINRA censured the Firm and fined it \$27,500.

In March 2000, FINRA accepted an AWC from Bruce Meyers and the Firm for violations of NASD Rule 3010 and FINRA Rule 2010. Without admitting or denying the allegations, Bruce Meyers and the Firm consented to findings that they failed to enforce the Firm's WSPs and traded ahead of customer limit orders. FINRA censured Bruce Meyers and the Firm, fined them \$10,000 jointly and severally, separately fined the Firm \$16,000, and ordered that the Firm pay \$5,819 in restitution.

### *3. Customer Arbitrations*

Member Regulation asserts that as of mid-February 2018, there were 13 customer arbitration claims pending against the Firm (which sought an aggregate of more than \$3.5 million in damages).<sup>25</sup> Each claim alleged supervisory failures by the Firm. At the hearing, Khan testified that approximately eight or nine arbitrations remain pending against the Firm and that he is helping to personally resolve and pay those claims.

Member Regulation further asserts that three arbitration awards have been rendered against the Firm in the past several years. On February 6, 2018, a FINRA arbitration panel entered against the Firm an award in the amount of \$45,425 in connection with a customer complaint. The customer alleged that, among other things, the Firm and Bruce Meyers made unsuitable recommendations, false and misleading statements, and failed to supervise. The customer alleged damages of \$800,000.<sup>26</sup>

In June 2016, a FINRA arbitration panel entered against the Firm and an associated person an award of \$17,940. The claimant alleged that the Firm failed to supervise his account, which he alleged had been churned.

In March 2014, a FINRA arbitration panel entered against the Firm an award of \$222,585 (plus punitive damages of \$100,000 and attorneys' fees and costs of approximately \$125,000). The customer alleged that the Firm failed to supervise the registered representative responsible for the account, who engaged in unsuitable recommendations and excessive trading.

### *4. Routine Examinations*

Member Regulation asserts that each of the Firm's examinations completed by FINRA since 2010 has resulted in some violations being referred to Enforcement for further action, with violations referred from certain examinations resulting in litigated complaints against the Firm

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<sup>25</sup> Member Regulation asserts that two of the 13 claimants have reached settlements in principle with the Firm. The Firm's exhibits show that 14 customer arbitration claims are pending against the Firm, four of those claims have been settled, and three other claims have been settled in principle.

<sup>26</sup> The Firm's exhibits show that this award has not yet been paid.

and others resulting in preliminary determinations to recommend disciplinary actions against the Firm.<sup>27</sup>

FINRA's 2017 cycle examination of the Firm is pending. The record shows that the Firm has missed several deadlines for producing documents to FINRA and provided several incomplete responses to FINRA's requests.

On September 25, 2017, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2016 examination (and also referred to Enforcement for further investigation exceptions related to the suitability and supervision of actively traded accounts, supervision of outside brokerage accounts, retention and reporting of customer complaints, and maintenance and retention of new account documents). FINRA cited the Firm for the following: (1) failing to establish adequate policies and procedures to enforce a reasonable AML Compliance Program; (2) charging excessive commissions and failing to enforce its WSPs to review customer orders; (3) failing to make required trading notifications pursuant to FINRA Rule 5190; (4) failing to evidence due diligence in connection with Regulation D offerings; (5) failing to enforce its WSPs with respect to maintaining a watch list for the Firm's syndicate investment banking deals; (6) failing to make necessary filings in connection with non-public offerings; (7) making unsuitable recommendations to customers and performing inadequate suitability reviews; (8) failing to conduct a branch office inspection of the Firm's Hauppauge, New York office; (9) failing to evidence approvals of registered representatives' LinkedIn profiles as required by the Firm's WSPs; and (10) failing to maintain copies of a registered representative's credit report and signed Form U4.

On June 3, 2016, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2015 examination (and also referred to Enforcement for further investigation suspicious transactions and trading activity). FINRA cited the Firm for failing to accurately report its net capital and adequately implement procedures in its WSPs related to calculating net capital.

On October 8, 2015, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2014 examination (and also referred a number of matters to Enforcement). FINRA cited the Firm for the following: (1) charging excessive commissions and excessively trading a customer account through a registered representative of the Firm; (2) failing to adequately supervise a registered representative to ensure that he complied with his firm-imposed suspension; (3) failing to adequately supervise trading activity in a security; (4) failing to maintain accurate financial books and records; (5) failing to establish procedures and implement an adequate supervisory system related to restricted accounts; (6) failing to supervise customer account activity; (7) failing to maintain complete records of municipal securities transactions; (8) failing to establish adequate procedures for its municipal securities business; (9) failing to maintain adequate procedures and parameters for determining appropriate options levels for customers and establishing an adequate supervisory system for options activity at the Firm; (10) executing transactions prior to approval by a principal; (11) failing to obtain all required new

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<sup>27</sup> In addition, in May 2015, and in connection with the SEC's examination of the Firm from October 2014 until March 2015, the SEC identified a number of deficiencies and weaknesses at the Firm related to, among other things, its AML and supervisory procedures. Member Regulation asserts that the action that resulted in the Disqualifying Order stemmed from these examination findings.



account opening information; (12) failing to comply with Regulation S-P; (13) failing to verify that changes in customers' investment objectives were properly documented; (14) failing to ensure that a registered representative obtained prior written approval for an outside business activity; and (15) failing to ensure that registered representatives timely disclosed outstanding judgments and liens.

On July 14, 2014, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2013 examination (and also referred to Enforcement exceptions related to the Firm's general supervisory system and books and records failures, some of which ultimately resulted in the December 2015 Wells Notice). FINRA cited the Firm for the following: (1) failing to comply with AML rules because the Firm's independent AML test for 2012 was not comprehensive in addressing the Firm's processes for the Customer Identification Program and suspicious activity reporting; (2) failing to accurately mark order tickets to identify instances where time and price discretion was utilized; (3) failing to comply with its WSPs and regulatory requirements regarding telemarketing; (4) paying earned commissions to registered representatives through unregistered entities; (5) failing to comply with its WSPs regarding email instructions from customers; (6) failing to adhere to guidelines required for restricting accounts; (7) maintaining WSPs that were inadequate to identify instances where registered representatives may open accounts or execute trades in states where they are not registered; (8) failing to establish adequate procedures to comply with FINRA's suitability rules; (9) failing to enforce its WSPs to ensure that faxes are reviewed by the Firm's compliance department before they are sent by registered representatives; (10) filing inaccurate FOCUS reports by failing to substantiate a balance for non-allowable assets; (11) failing to adhere to its WSPs to ensure that the Firm's operations department retained a copy of address change confirmations sent to customers; (12) accepting cashiers' checks from customers even though the Firm's WSPs do not permit this practice; and (13) failing to maintain accurate registration records regarding a registered representative's business address and identifying on customer account statements a non-registered branch location as the branch office of record.

On October 16, 2013, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2012 examination (and also referred to Enforcement a number of exceptions, some of which, along with the referral from the 2013 examination, ultimately resulted in the December 2015 Wells Notice). FINRA cited the Firm for the following: (1) failing to obtain adequate proof of customer identification for new accounts; (2) failing to properly maintain records of written customer complaints; (3) failing to record on its books and records private securities transactions in which the Firm's registered representatives were approved to engage in and failing to properly supervise such transactions; (4) failing to archive text messaging even though several registered representatives used some form of text messaging related to Firm business; (5) distributing a brochure that contained false, exaggerated, and misleading statements; (6) failing to properly document customer information; (7) failing to establish and implement adequate supervisory procedures for review of correspondence; (8) failing to maintain exception reports, all regulatory reports for three years, and documentation concerning approval of changes to order tickets; (9) failing to provide evidence that issuer information was reviewed prior to recommending purchases in OTC equity securities; (10) failing to provide continuing education for a branch manager; (11) maintaining inadequate WSPs because they did not make provisions for the review of all transactions by a registered principal and maintaining inadequate records regarding such reviews; (12) failing to properly supervise producing managers; (13) failing to implement its WSPs in a branch office; (14) failing to provide documentation of customer confirmation, notification, or follow-up for outgoing wire transmittals; (15) failing to provide

documentation regarding a customer's change of address and evidence that changes of customer investment objectives were verified; and (16) failing to supervise the activity of a registered representative in connection with the research he provides to an outside company.

E. The Firm's Proposed Continued Membership in FINRA

Prior to the February 28, 2018 hearing on the Application, and in light of the Firm's statutory disqualification as a result of the Disqualifying Order, the Firm repeatedly represented to FINRA that it intended to cease operations.<sup>28</sup> In furtherance of that stated goal, in mid-September 2017, the Firm filed a continuing membership application to transfer its customer accounts to another broker-dealer. The Firm stated that it wanted to provide "for a smooth transition of customer accounts" and that the Firm's clearing firm had identified another broker-dealer to accept many of the customer accounts as well as the Firm's registered representatives. Khan testified that it had a draft agreement with the acquiring broker-dealer for the Firm to operate as a branch office of the acquiring firm, with Khan acting as the branch manager. The Firm further represented that neither the Firm nor any associated individual would be receiving compensation for the customer accounts. At the time of the hearing on this matter, this continuing membership application was pending and the Firm continued in business.<sup>29</sup>

At the hearing, however, the Firm revealed that notwithstanding the pending membership continuance application, it wished to remain in business. Khan testified that "it's not fair for me to just walk away without making some effort to keep this firm in business" and that "his conscience" prevented him from simply walking away from the Firm without attempting to gain approval of the Application. Khan characterized the pending continuing membership application to transfer the Firm's customer accounts as a contingency plan.<sup>30</sup> He stated that he has contributed to the Firm more than \$1 million in capital since June 2016.<sup>31</sup>

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<sup>28</sup> The Application states that the Firm intends to file a Uniform Request for Broker-Dealer Withdrawal ("Form BDW") on or before December 31, 2017. Although that did not occur, as recently as mid-February 2018, the Firm made representations that it planned to wind down its operations and file a Form BDW once FINRA approved the Firm's continuing membership application to transfer its customer accounts, discussed herein. The Firm made such representations in connection with a request to continue the hearing on the Application, which the Hearing Panel denied.

<sup>29</sup> The Firm also filed a continuing membership application in late July 2017 for approval of Bruce Meyers's transfer of his ownership interests in the Firm to the trust (which appears to have occurred in or around January 1, 2017). *See supra* note 16. The Firm filed this application only after repeated reminders from FINRA that an application was required under FINRA's rules. As of the hearing, this membership continuance application was pending.

<sup>30</sup> Khan testified that he also has filed a membership application with FINRA to create a new broker-dealer that he will run, which was pending as of the hearing. In connection with that application, Khan testified that he has used his experience at the Firm to show that he has broker-dealer management experience.

<sup>31</sup> In addition, a Firm registered representative (Robert Lewin, a long-time friend of Khan) made a \$125,000 investment in the Firm pursuant to a self-offering in November 2017. This

#### IV. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because, in its view: (1) the Firm's extensive regulatory and disciplinary history "renders it impossible to conclude it is in the interest of the investing public" to allow the Firm to remain a FINRA member; (2) the Firm has not demonstrated any improvement in compliance or management and has failed to comply with the Disqualifying Order; and (3) the Firm failed to propose any plan of supervision and it would be unable to implement any supervisory plan.

#### V. Discussion

Exchange Act Section 15A(g)(2) provides that FINRA may deny membership to a firm that is subject to statutory disqualification. *See* 15 U.S.C. § 78o-3(g)(2) ("A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification."). FINRA's By-Laws provide that no broker-dealer shall continue in FINRA membership if it becomes subject to statutory disqualification unless it seeks relief from such disqualification pursuant to FINRA's rules. *See* FINRA By-Laws, Art. III, Secs. 3(a) & (d).

FINRA may, in its discretion, grant relief from a statutory disqualification if it "determines that such approval is consistent with the public interest and the protection of investors." *See* FINRA By-Laws, Art. III, Sec. 3(d); FINRA Rule 9524(b)(1) (providing that the NAC, after considering "all matters presented in the request for relief . . . the public interest, and the protection of investors" may grant or deny the request for relief); *cf. William J. Haberman*, 53 S.E.C. 1024, 1027 n.7 (1998) ("NASD may, in its discretion, approve association with a statutorily disqualified person only if the NASD determines that such approval is consistent with the public interest and protection of investors."), *aff'd*, 2000 U.S. App. LEXIS 645 (8th Cir. 1999). FINRA may consider "the relevant facts and circumstances as it, in its discretion, considers necessary to its determination, which, in addition to the background and circumstances giving rise to the . . . disqualification, may include the proposed or present business of a member[.]" *See* FINRA By-Laws, Art. III, Sec. 3(d); *cf. also Meyers Associates, L.P.*, 2017 SEC LEXIS 3096, at \*29-30 (affirming FINRA's denial of statutory disqualification application where "FINRA weighed the facts and circumstances developed at the hearing and cogently explained the basis for its decision that Meyers's continued association with the Firm was not in the public interest and would present an unreasonable risk of harm to the market or investors").

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investment occurred several months after the Firm had notified FINRA that the Firm had discontinued the offering. Stalanski testified that he was currently working on putting a prohibition in place to ensure additional investments were not made in connection with this offering.

The Firm has the burden of demonstrating that its continued membership is in the public interest despite the disqualification. See *In the Matter of the Continued Membership of X*, Redacted Decision No. SD12007, slip op. at 3 (FINRA NAC 2012), [http://www.finra.org/sites/default/files/NACDecision/p284387\\_0.pdf](http://www.finra.org/sites/default/files/NACDecision/p284387_0.pdf) (“We find, based in part upon the Firm’s representations and the special procedures set forth below, that the Firm has met its burden in this Application and that its continued membership in FINRA will not create an unreasonable risk of harm to the market or investors); cf. *Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at \*16 & n.17 (Mar. 26, 2010) (“The burden is on the applicant to show that it is in the public interest to permit the requested employment despite the disqualification.”).

After carefully reviewing the entire record in this matter, we find that the Firm has failed to demonstrate that its proposed continued membership in FINRA is in the public interest. The Firm has failed to comply with terms of the Disqualifying Order, which raises serious concerns that the Firm is currently unwilling or unable to comply with securities laws and regulations. Moreover, the Firm did not propose any heightened plan of supervision in connection with the Application to help ensure its compliance with securities laws and regulations and failed to demonstrate that its current management is willing and able to ensure compliance with securities laws and regulations going forward. Finally, the Firm has not demonstrated that it has made the necessary changes to become more compliant. These factors lead us to conclude, without hesitation, that the Firm’s proposed continued membership with FINRA would create an unreasonable risk of harm to investors and the market. Accordingly, we deny the Application.

A. The Firm Has Not Complied with the Disqualifying Order

The record shows that the Firm has failed to substantially comply with the undertakings set forth in the Disqualifying Order, which strongly suggests—despite the Firm’s assertions to the contrary—that it is currently unwilling or incapable of complying with securities laws and regulations. First, the Firm has not made, and has failed to timely make, all of its required payments under the Disqualifying Order. Specifically, the Firm missed its first monthly payment of the \$200,000 penalty in August 2017, made a single payment of \$12,500 in September 2017, made a \$25,000 payment in November 2017, and failed to make a payment in December 2017. Although the Firm made some additional payments in early 2018, as of mid-February 2018, it was still one payment behind (and had not made a payment for February 2018 as of the February 28 hearing date).<sup>32</sup> The Firm has not explained why it has failed to comply with this requirement of the Disqualifying Order, especially in light of documents in the record indicating that it held sufficient funds to pay these obligations.

Second, the Firm did not retain an independent consultant by August 27, 2017. Indeed, as of the date of the hearing, it appeared that the Firm has not yet retained an independent

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<sup>32</sup> In light of evidence in the record to the contrary (including representations from SEC staff), we do not credit Khan’s testimony that the Firm is current on its payments. Indeed, as a general matter, the Hearing Panel found Khan’s testimony to be not credible. For example, Khan’s testimony that the Firm is currently in compliance with the Disqualifying Order was directly contradicted by several witnesses, and the Firm’s counsel, at the hearing.

consultant to perform the work required by the Disqualifying Order (and as a consequence, the first semi-annual written assessment of the Firm's AML procedures and processing of suspicious activity reports has not been timely filed with the SEC). We are troubled by the conflicting testimony of Cruz, Stalanski, and Khan regarding the retention of the consultant (as well as the Firm's representations prior to the hearing that, among other things, the consultant was in the process of performing work for the Firm). It appears that Khan has been the individual negotiating with potential consultants and that Cruz and Stalanski are not up to speed on the status of these matters. We are further troubled by the fact that more than seven months after entry of the Disqualifying Order, an independent consultant has not even started its work at the Firm to examine and assess its AML policies and procedures, which Stalanski testified were simply the FINRA AML template. We flatly reject Khan's unsubstantiated attempt to downplay this failure by asserting that the independent consultant could not begin its work until the beginning of 2018.

Third, the Firm has not certified that it no longer accepts low-priced securities, despite the Disqualifying Order's requirement that it do so no later than August 4, 2017. The Firm and certain of its witnesses could not adequately explain why the Firm has not complied with this basic requirement. For example, prior to the hearing the Firm represented to FINRA that it "is in full compliance with this Undertaking having not taken in any customer deposits of stock trading at less than \$5 per share since the date of the SEC Order."<sup>33</sup> Similarly, Cruz unequivocally testified that the Firm does not accept low-priced securities in accordance with the Disqualifying Order. In contrast, Khan testified that the Firm could not make a certification that the Firm no longer accepted low-priced securities because its clearing firm had failed until recently to deliver certain unspecified reports to the Firm that would enable the Firm to make that certification.

We are highly troubled that the Firm has failed to comply in several important respects with the terms of the Disqualifying Order. The Firm has failed to timely make payments under the Disqualifying Order, and more than seven months after entry of the order the Firm has still not filed a basic certification. Moreover, the Firm has failed to comply with the straight-forward terms of the order's primary undertaking (i.e., hiring an independent consultant to assess the Firm's AML policies). Given Stalanski's testimony that the Firm's current AML procedures are still a work in progress and the Firm's history of AML violations, retaining an expert to review such policies is even more important. Yet, as of the hearing date, no consultant has looked at the Firm's policies and Stalanski has not discussed them with any third party. The Firm's disregard of the Disqualifying Order's terms weighs heavily against approving the Application, and supports our conclusion that the Firm is not currently able to comply with securities laws and regulations and that approval of the Application is not in the public interest.<sup>34</sup> See *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at \*27-38, \*48-49 (Sept. 13, 2010) (affirming denial of statutory disqualification application based upon, among other things, disqualified individual's failure to comply with his disqualifying order).

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<sup>33</sup> SEC staff confirmed that they had not received a certification from the Firm, although it gave verbal assurance of compliance with this undertaking.

<sup>34</sup> We further note that this is not the first time that the Firm has failed to comply with a regulator's order. For instance, the 2017 Connecticut Order found that the Firm violated the terms of prior orders against it entered by Connecticut's Department of Banking.

B. The Firm Has Not Proposed Any Written Plan

The Firm failed to propose any heightened supervisory or compliance plan in connection with the Application, which further supports our denial.<sup>35</sup> In the context of statutorily disqualified individuals, the SEC has emphasized the importance of stringent supervision pursuant to a heightened supervisory plan. *See Frank Kufrovich*, 55 S.E.C. 616, 628-29 (2002) (affirming denial of statutory disqualification application for an individual and holding “that the plan lacks a key component – stringent supervision”); *Morton Kantrowitz*, 55 S.E.C. 98, 102 (2001) (holding that “the quality of the supervision to be accorded that person is of the utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls”).

A heightened supervisory or compliance plan is similarly important in connection with a firm’s request to continue its FINRA membership notwithstanding its disqualification. In matters such as these, a written plan serves as a safeguard to help ensure that the disqualified firm does not repeat the misconduct underlying the disqualifying event and generally complies with securities laws and regulations going forward. A written plan also provides FINRA examiners with concrete factors and benchmarks to help measure and assess a firm’s compliance with securities laws and regulations if FINRA permits the firm to continue in membership.

Here, however, the Firm has not proposed any plan. The absence of a plan is made more troubling in the context of the Firm’s lengthy history of failing to comply with various securities laws and regulations and its failure to comply with the Disqualifying Order (including certifying that it no longer engages in penny stock business). Omitting this most basic aspect of the Application indicates that the Firm does not understand or appreciate the seriousness of this process and the ramifications of its statutory disqualification. *Cf. In the Matter of the Continued Ass’n of X*, Redacted Decision No. SD10003, slip op. at 6 (FINRA NAC 2010), [http://www.finra.org/sites/default/files/NACDecision/p125898\\_0\\_0.pdf](http://www.finra.org/sites/default/files/NACDecision/p125898_0_0.pdf) (stating that one factor in weighing whether to approve an application to employ a statutorily disqualified individual is “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”).

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<sup>35</sup> Question 5 of the MC-400A provides that “[n]otwithstanding the disqualifying event, provide a detailed statement of why the Applicant should be allowed to continue its FINRA membership, including what steps the Firm has taken, or will take, to ensure that the disqualification doesn’t negatively impact upon the Firm’s ability to continue its membership with FINRA.” In response, the Firm simply stated that it intended to go out of business. The Firm, however, never submitted a plan after it determined that it wanted to continue in business. The Firm failed to do so even though Member Regulation specifically cited the Firm’s failure to provide any proposed plan as a reason to deny the Application.

Moreover, the Firm is familiar with the statutory disqualification process generally, having been through the process twice (with Bruce Meyers in 2016 and another individual in 2017). In both those matters, the NAC emphasized the importance of a stringent supervisory plan in connection with a statutorily disqualified individual to help ensure that he complied with securities laws and regulations going forward.

The Firm argues that we have approved the continued memberships of other statutorily disqualified firms with regulatory and disciplinary histories similar to the Firm's. We note, however, that in all of those instances the disqualified firm: (1) proposed a stringent supervisory plan to help ensure that it did not engage in misconduct similar to the misconduct underlying the disqualifying event and complied with securities laws and regulations going forward (or the firm made credible representations that it no longer engaged in the activities related to the disqualifying event and enhanced its procedures to prevent similar misconduct); and (2) was in full compliance with any undertakings imposed in connection with its disqualification.<sup>36</sup> See, e.g., *In the Matter of the Continued Membership of RBC Capital Markets, LLC*, SD-1794 (FINRA NAC Jan. 31, 2014), [http://www.finra.org/sites/default/files/NAC\\_SD-1794\\_RBC\\_013114.pdf](http://www.finra.org/sites/default/files/NAC_SD-1794_RBC_013114.pdf); *In the Matter of the Continued Membership of X*, Redacted Decision No. SD130004 (FINRA NAC 2013), <http://www.finra.org/sites/default/files/SD13004.pdf>; *In the Matter of the Continued Membership of X*, Redacted Decision No. SD12007 [http://www.finra.org/sites/default/files/NACDecision/p284387\\_0.pdf](http://www.finra.org/sites/default/files/NACDecision/p284387_0.pdf). This stands in stark contrast to the situation at hand.

The Firm further requests that we approve the Application with whatever conditions and contingencies we deem appropriate. We decline to do so for several reasons. First, the Firm's request erroneously presumes that the Application can be salvaged with minor changes and alterations to the Firm's business rather than the wholesale changes that are necessary to demonstrate that the Firm's continued membership is in the public interest. Second, it was the Firm's burden to demonstrate that the Application should be approved and to craft an appropriate plan, yet it failed to meet that burden. Cf. *Pedregon*, 2010 SEC LEXIS 1164, at \*28 (stating that a firm bears the burden of proposing an adequate supervisory plan for a disqualified individual and that FINRA was fully justified in requiring the firm to provide specifics concerning that plan before approving an application); *Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at \*20 (July 17, 2009) (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"). The Firm's request that we craft an appropriate plan and restrictions for the Firm's continued membership is particularly perplexing given that it did not propose *any* plan to help ensure its compliance with securities laws and regulations going forward.

C. The Firm Has Not Demonstrated that It Is Capable of Complying with Securities Rules and Regulations Going Forward

We further find that the Firm has failed to show that it is capable of complying with securities rules and regulations going forward. First, the Firm has not demonstrated that it has a management team in place to help ensure better compliance. Cruz has never served in an officer position prior to joining the Firm, and Stalanski has approximately four years of experience as a chief compliance officer (and was out of the industry for an extended period of time prior to

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<sup>36</sup> We further note that our denial of the Application is not based upon the Firm's disciplinary and regulatory history. Rather, we deny the Application because the Firm has not complied with the terms of the Disqualifying Order, failed to propose any supervisory plan in connection with the Application, and has failed to demonstrate that it is capable of complying with securities rules and regulations going forward (particularly with the Firm's current management, as described herein).

joining the Firm). Stalanski further conceded that the prior firms where he served as a chief compliance officer did not have as extensive disciplinary and regulatory problems as the Firm. Given the Firm's regulatory and disciplinary history, and the fact that it previously elevated Telfer and Lanaia to officer-level positions at the Firm despite their regulatory histories (and the Firm's continued non-compliance with securities laws and regulations during their tenures), it is particularly important that the Firm select qualified and capable managers to help ensure the Firm's compliance with securities laws and regulations. We are not convinced that Cruz and Stalanski meet this description.<sup>37</sup>

Even if Cruz and Stalanski had more extensive senior-level management experience, neither individual appears to be up to the task of ensuring that the Firm complies with securities laws and regulations going forward. Khan described Stalanski as "buried" with work, and both Cruz and Stalanski testified that they primarily have been responding to regulators (in addition to performing numerous other tasks). Moreover, both Cruz and Stalanski demonstrated a lack of basic knowledge of the Firm's affairs that we would expect them to have, even with their relatively short tenures at the Firm. For example, Cruz demonstrated that he is not familiar with his six direct reports, and did not even know about the Disqualifying Order until several months after it was entered. Further, neither Cruz nor Stalanski could provide the status of certain undertakings under the Disqualifying Order, including whether a consultant had started work pursuant to that order.

Khan's role at the Firm further undercuts the Firm's assertion that it has new management in place that is ready and able to ensure future compliance. Although Khan's exact role at the Firm is not entirely clear, he has been intimately involved with the Firm for the duration of its well-chronicled regulatory and disciplinary history. Further, he currently sits on the Firm's board of directors, recently hired Stalanski, and as the Firm's owner and current source of capital, at a minimum it appears that he controls or has the ability to control the Firm. Consequently, we are skeptical of the Firm's assertion that its current management team represents a break from its past and question whether Cruz, Stalanski, and others in leadership positions will have sufficient independence and autonomy from Khan to ensure the Firm's future compliance with securities laws and regulations.<sup>38</sup>

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<sup>37</sup> Underscoring this point, at the hearing Khan lamented the fact that he cannot attract "quality" individuals to the Firm because of its history.

We also question whether N. Scott (the Firm's municipal securities principal) and Pace (a member of the Firm's board of directors, management team, and direct supervisor of 20 registered representatives) are committed to, and capable of, helping to ensure the Firm's future compliance. Although neither individual testified at the hearing, their records raise questions. For example, N. Scott has been the subject of two recent state regulatory actions, two complaints pursuant to which customers were paid \$346,000, and five outstanding judgments and liens totaling approximately \$650,000. Pace has been the subject of five complaints pursuant to which customers were paid \$261,000.

<sup>38</sup> This is particularly important given Khan's strong ties to the Firm's past and his current view that other than a handful of individuals, none of the Firm's registered representatives has any regulatory or compliance issues.



Second, the Firm has not demonstrated that it has made adequate changes to its supervisory systems and controls to ensure better compliance results going forward. Stalanski described several key aspects of the Firm's supervisory and compliance controls, such as the Firm's WSPs and AML procedures, as "works-in-progress" that he is currently attempting to fix, and Cruz described the Firm as in transition and a "fixer upper." This strongly suggests that the Firm is not currently in a position to ensure its compliance with securities laws and regulations and is not likely to be in the near future. Further, although Cruz testified generally that the Firm is "looking at all areas" to improve the Firm, the areas that he specifically testified that the Firm had improved (extensions under Regulation T and customer account openings) do not, even if true, demonstrate that the Firm will comply with securities laws and regulations going forward.<sup>39</sup> Similarly, and despite the Firm's assertions that it has terminated employees with "questionable business practices," 74% of the Firm's current registered representatives have at least one disclosure on their Forms U4 (and 58% have three or more disclosures). Other than Cruz's general statement that he plans to review all personnel at the Firm (which he asserts he already did upon joining the Firm), the Firm has proposed nothing specific to ensure that it employs compliant individuals. Similarly, although the Firm asserts that since June 2016 it has improved its hiring practices, CRD shows that one registered individual hired in May 2017 (Robert Lewin, Khan's long-time friend and a recent investor in the Firm) has five customer complaints (one of which alleged churning and was recently settled for \$114,500).

Finally, we find it particularly problematic that Cruz and Stalanski have both failed to look more closely at the Firm's registered representatives as a whole and to place certain registered individuals under heightened supervision. As a general matter, Stalanski testified that only one or two representatives are currently under heightened supervision. We further find it inexcusable that the Firm failed to immediately place certain individuals under heightened supervision. For example, Cruz testified that he is "currently working" on placing one of his six direct reports on heightened supervision in connection with a 2016 Wells Notice for potential violations of anti-fraud rules and regulations, which he claims to have learned about in January 2018. Cruz did not explain why he has delayed doing so (other than the fact that he is currently busy with other things), or why he only recently discovered the existence of the Wells Notice. Similarly, Stalanski has delayed placing a registered representative—who is subject to a FINRA August 2017 complaint alleging that he churned elderly customers' accounts—on heightened supervision, and Stalanski is currently investigating the circumstances surrounding Wells Notices issued in late 2016 to three other associated persons at the firm involving potentially

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<sup>39</sup> The Firm's exhibits also include, among other things, a statement that the Firm has not had "new regulatory matters from non-legacy activities" since June 2016. We note, however, that the referrals to Enforcement from several past examinations—including both the 2016 and 2017 examinations (in which serious potential misconduct, including concerns regarding suitability, supervision of actively traded accounts, and suspicious transactions and trading activity)—remain pending. Further, FINRA has not yet completed its 2017 examination of the Firm, in part because the Firm has missed several deadlines to produce documents and information and provided incomplete responses in connection with that examination.

serious misconduct. The Firm's failure to take these basic steps belies its assertion that it is capable of complying with securities laws and regulations and will do so in the future.<sup>40</sup>

## **VI. 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 the Firm to continue its FINRA membership. We therefore deny the Application.<sup>41</sup> This decision is effective immediately.<sup>42</sup>

On Behalf of the National Adjudicatory Council,

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Jennifer Mitchell Piorko  
Vice President and Deputy Corporate Secretary

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<sup>40</sup> These failures are particularly puzzling given that in the May 2016 NAC Decision, we emphasized the importance of timely placing individuals under heightened supervision and found that the Firm's failure to do so with Bruce Meyers was "indicative of the Firm's shortcomings." *See* May 2016 NAC Decision, at 31.

<sup>41</sup> We are cognizant that our denial of the Application will likely result in the Firm's closure and the loss of employment for the Firm's registered and unregistered employees. The Firm, however, failed to demonstrate that the public interest would be served by approving the Application and under the circumstances, the protection of the investing public requires that we deny the Application notwithstanding any collateral consequences that will result from such denial.

<sup>42</sup> *See* FINRA Rule 9524(b)(3) (providing that a decision to deny a firm's application to continue its FINRA membership notwithstanding a statutory disqualification shall be effective immediately).